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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 8

DONALD JOSEPH AND PAUL PIERCE,
PETITIONERS,

vs.

STATE OF INDIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

PETITION FOR CERTIORARI FILED MAY 10, 1957
CERTIORARI GRANTED OCTOBER 14, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

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DONALD JOSEPH AND PAUL PIERCE, PETITIONERS,

VS.

STATE OF INDIANA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA

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[fol. A] [File endorsement omitted]

IN THE SUPREME COURT OF INDIANA, APPEAL FROM THE HANCOCK COUNTY CIRCUIT COURT

Cause No. 29231

DONALD JOSEPH, and PAUL PIERCE, Appellants,

vs.

THE STATE OF INDIANA, Appellee.

APPELLANTS' ASSIGNMENT OF ERRORS—Filed May 10, 1955

Comes now appellants, Donald Joseph and Paul Pierce, by their attorneys, Waldo C. Ging and Stephen A. Free, and says that there is manifest error in the proceedings and judgment in this cause, in this, towit:

1.

That the Court erred in denying defendants' separate and several motion for the personal presence and appearance in the Hancock County Circuit Court of defendants during the hearing and argument of the motion for new trial herein and in refusing to issue the necessary order therefor timely requested by defendants, in contravention of Article I, Section 13, Indiana Constitution, and the Fourteenth Amendment of the United States Constitution.

2.

That the Court erred in overruling the motion for new trial.

[fol. B] WHEREFORE, the Appellants, Donald Joseph and Paul Pierce, respectfully pray that the judgment in said cause be, in all things reversed.

Respectfully submitted, (S.) Waldo C. Ging, Attorney for Appellants. (S.) Stephen A. Free, Attorney for Appellants, Strickland Building, Greenfield, Indiana.

[fols. 1-3] IN CRIMINAL COURT OF MARION COUNTY, STATE OF INDIANA

THE STATE OF INDIANA, MARION COUNTY,

vs.

DONALD JOSEPH—Jail
PAUL PIERCE—Jail

INDICTMENT FOR FIRST DEGREE MURDER—Filed December 18, 1935

The Grand Jurors for the County of Marion and State of Indiana, upon their oaths present that DONALD JOSEPH and PAUL PIERCE on or about the 7th day of December, A.D. 1935, at and in the County of Marion and State aforesaid, did then and there unlawfully, feloniously, purposely and with premeditated malice kill and murder Orville Quinnette, a human being, by then and there unlawfully and feloniously, purposely and with premeditated malice shooting at and against the body of the said Orville Quinnette with a pistol then and there loaded with gunpowder and metal bullets, then and there held in their hands, and did then and there and thereby inflict mortal wounds in and upon the body of the said Orville Quinnette of which mortal wounds the said Orville Quinnette then and there sickened and languished and of which mortal wounds the said Orville Quinnette on the 18th day of December, A.D. 1935, in the County and State aforesaid, then and there and thereby died. And so the Grand Jurors aforesaid, upon their oaths aforesaid, do say and charge that the said Donald Joseph and Paul Pierce, in the manner and form and by the means aforesaid, unlawfully and feloniously, purposely and with premeditated malice, did kill and murder the said Orville Quinnette, than and there being contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State of Indiana.

(S.) Herbert M. Spencer, Prosecuting Attorney.

[fol. 4] (Back of the Indictment.) Record Book 57, Page 512. No. 70155. The State of Indiana vs. Donald Joseph

—Jail, Paul Pierce—Jail. Indictment for first degree murder. A true bill.

(S.) Elizabeth G. Neely, Foreman, state witnesses: PO. Auls, Gish, Giles, Chatham, Pope, McCarthy: State Police Moore & Richardson, Ben Deavee, 611 E. 12th St. Dr. Edmond D. Moten, 1330 Cornell, Dr. Myers, c/o City Hospital, Dr. Kohlstadt, c/o City Hospital.

[File endorsement omitted.]

No bond.

[fols. 5-8] IN THE CRIMINAL COURT OF MARION COUNTY

[Title omitted]

ORDER GRANTING MOTION FOR CHANGE OF VENUE—December 28, 1935

Come now the parties to the above cause. Defendants Motion for Change of venue from county, heretofore filed, is now granted, and the court now venues this cause to the Hancock Circuit Court at Greenfield, Indiana, for trial.

[fols. 9-42] [File endorsement omitted]

IN THE HANCOCK CIRCUIT COURT STATE OF INDIANA

Cause No. 7668

STATE OF INDIANA

vs.

DONALD JOSEPH and PAUL PIERCE

MOTION FOR A NEW TRIAL—Filed March 12, 1953

Comes now Donald Joseph and Paul Pierce, defendants in the above entitled cause and respectfully, separately and severally present this, their motion for a new trial and move the court for a new trial thereof upon the following grounds and for the following reasons:

1. Irregularities in the proceedings of the Court and abuse of discretion by which the defendants each and

severally were prevented from having a fair trial in this to-wit:

(a) The court erred in refusing the defendant's application for a change of judge of the said court.

(b) The court erred in overruling the defendant's motion for continuance of said cause.

(c) The court erred in failure to appoint competent counsel experienced in criminal matters and proceedings until the morning of the trial where the trial court had knowledge that the defendant's chief counsel had been confined to the hospital and would be physically unable to participate in defendant's trial, and that his associate counsel had had no previous experience in criminal matters.

[fols. 43-49] (d) The court over the separate and several objections of the defendant's timely made, permitted the trial jury in said cause to separate for approximately 196 hours and to go out into a community which was strongly prejudiced against defendants in this cause.

(e) The court over the separate and several objections of the defendant's timely made permitted the trial jury to separate during said trial.

2. Error of law occurring at the trial in this, to-wit:

(a) The court over the defendant's separate and several objections, timely made, admitted evidence which had been obtained by illegal search and seizure in violation of defendant's constitutional rights in this: the revolver identified by police officers as the weapon illegally seized and allegedly used to cause the death of Orville Quinnette.

3. That the verdict of the jury is contrary to law.

4. That the verdict of the jury is not sustained by sufficient evidence.

Wherefore, Donald Joseph and Paul Pierce, defendants herein, each separately and severally pray the court for a new trial of said cause.

Respectfully submitted, (S.) Donald Joseph, Defendant. (S.) Paul Pierce, Defendant. (S.) James C. Cooper, Attorney for Defendant. (S.) Waldo C. Ging, Attorney for Defendant.

[fol. 50] IN THE HANCOCK CIRCUIT COURT

ORDER APPOINTING COUNSEL—September 25, 1953

Comes now the State of Indiana by George F. Dickmann, Deputy Prosecuting Attorney; and come now the defendants herein in person and by Waldo C. Ging their attorneys; and the court now calls for hearing the motion asking that the defendants be adjudged paupers and said defendants are examined as to the matters involved in said motion under oath and said examination is closed and the court being duly advised in the premises now finds that each of said defendants are paupers and that they have no money or property of any kind with which to hire an attorney in this cause and no persons that are going to furnish them any money and that they have no means or any source of means to hire an attorney.

It is therefore decreed and adjudged by the court that said defendants are paupers and have no attorney representing them and no means with which to pay an attorney or have no way of securing any means and that an attorney should be appointed for each of said defendants to represent them in this cause and the court now appoints Waldo C. Ging and Stephen A. Free, partners in the firm of Ging and Free, attorneys of Greenfield, Indiana as attorneys to defend these defendants in this cause of action, said attorneys to be paid as pauper attorneys and to be paid by Marion County, Indiana, all of which is ordered and adjudged.

[fols. 51-52] [Title omitted]

IN THE HANCOCK CIRCUIT COURT

ORDER SETTING CAUSE FOR TRIAL—January 28, 1954

Comes now the State of Indiana by Frank Fairchild, Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana and John Dailey, Deputy Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana and Thomas W. McKean, prosecuting Attorney for the 18th Judicial Circuit, State of Indiana; and come now the defendants,

Donald Joseph and Paul Pierce in person and by Ging and Free, their attorneys and this cause having been set for trial on this date is now called for trial and the selection of a jury to try this cause is now begun and prospective jurors in this matter are now examined by each of said parties by their attorneys in regard to their competency to serve as jurors herein and the time for adjournment having been reached and the selection of a jury not being completed, the trial of this cause is now adjourned until January 29, 1954 at 9:00 o'clock A.M. and the Sheriff of Hancock County is now ordered to return said prisoners to his custody in the jail of Hancock County, Indiana.

[fols. 53-138] [Title omitted]

IN THE HANCOCK CIRCUIT COURT

VERDICT—Filed February 6, 1954

We, the jury, find the defendants guilty of Murder in the Second Degree, and that they shall be imprisoned in the State Prison during life.

(S.) Mahlon C. Marshall, Foreman.

[File endorsement omitted.]

[fol. 139] [Title Omitted]

IN THE HANCOCK CIRCUIT COURT

SENTENCE ON VERDICT—February 16, 1954

Comes now the States of Indiana by Thomas W. McKean, Prosecuting Attorney for the 18th Judicial Circuit, State of Indiana, and come now the defendants, Donald Joseph and Paul Pierce, in person and by Ging and Free, their attorneys and the court now questions and examines said defendants and each of them as to whether they have had time to consult with their attorneys as to any steps they

desire to take before going to prison and the court also questions said Waldo C. Ging and Stephen A. Free as to whether they have had all the time to consult with their clients as to any steps which they desire to take for their clients before said clients are taken to prison, which questioning and examination is taken down in stenograph by the Court Reporter and transcribed to longhand and is now filed herein and is in the words and figures following, to-wit: (H.I.).

[fol. 140] The court now, as to the defendant, Donald Joseph, pronounces sentence upon the verdict therein as follows: The court now finds upon the verdict of the jury that defendant, Donald Joseph, is guilty of the offense of Murder in the Second Degree as included in the indictment herein; and the court now finds that upon said verdict of the jury the defendant, Donald Joseph, should be sentenced herein to the Indiana State Prison at Michigan City, Indiana during his natural life. The court therefore adjudges and decrees that the defendant, Donald Joseph is guilty of the offense of Second Degree Murder as included in the indictment herein and now sentences the defendant Donald Joseph to the Indiana State Prison at Michigan City, Indiana for and during his natural life.

The court now pronounces sentence upon the verdict of the jury herein as follows as to the defendant, Paul Pierce, as follows: The court now finds upon the verdict of the jury herein that the defendant, Paul Pierce, is guilty of the offense of Murder in the Second Degree as included in the indictment herein; and the court now finds that upon said verdict of the jury the defendant, Paul Pierce, should be sentenced to the Indiana State Prison at Michigan City, Indiana, during his natural life. The court therefore adjudges and decrees that the defendant, Paul Pierce is guilty of the offense of Second Degree murder as included in the indictment herein and now sentences the defendant, Paul Pierce, to the Indiana State Prison at Michigan City, Indiana, for and during his natural life and the Sheriff of Hancock County is now ordered and directed to take the proper steps to commit [fol. 141] said defendants and each of them to said prison and the court now orders that said Sheriff shall have the right and shall secure one attendant to accompany him

in transporting said defendants and each of them to said Indiana State Prison and that said attendant shall be paid for his services as provided by law.

[fol. 142] [File endorsement omitted]

IN THE HANCOCK CIRCUIT COURT

MOTION FOR NEW TRIAL--Filed March 6, 1954

Come now the defendants, Donald Joseph and Paul Pierce, separately and severally, by their attorneys, Waldo C. Ging and Stephen A. Free, and each respectfully moves the court for a new trial in the above entitled cause on the grounds and for each of the following separate and several reasons, towit:

1. The verdict of the jury is contrary to law.

2. The verdict of the jury is not sustained by sufficient evidence.

3. Error of law occur-ing at the trial in overruling the objection of the defendant, Paul Pierce to the question hereinafter set forth and propounded by the State of Indiana during the direct examination of Jesse McCarty, a witness called on behalf of the State of Indiana, and in permitting the said witness to answer the question, which question, objection and ruling of the court are in the following words:

Q. Tell the jury what the substance of that conversation was?

To which question the defendant, Paul Pierce made the following objection:

We want to seriously object to any conversation that this officer had with the defendants at this time unless it is first shown, or Mr. Pierce, rather, unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult with an attorney or advised that whatever he might say might be said against him and that he had a right not [fol. 143] to make any statement at all and there is noth-

ing here in this man's testimony, as yet, which shows that any conversation or statement Mr. Pierce might have made at that time was a voluntary statement and in short, there has been no premise laid which would permit this witness, at this time, to testify to anything that Paul Pierce said about this occurence, and for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention, he had received no instructions from any magistrate as to his constitutional rights, he had no representation, either family representation, or attorney representing him at that time to advise with him as to what he should do with regard to this questioning by this officer and his associates or that any statement made by Mr. Pierce in the presence of this officer or his associates, under the circumstances would be a violation of this defendants constitutional rights, and also that under no circumstances could the statement made by Paul Pierce, any statement made by Paul Pierce to this officer, out of the presence of Donald Joseph would be any evidence in this case as against Donald Joseph.

The court thereafter erroneously overruled the objection of said Paul Pierce and the State's witness, Jesse McCarty was permitted to answer said question as to the defendant, Paul Pierce.

[fol. 144] 4. Error of law occuring at the trial in overruling the objection of the defendant, Paul Pierce to the offering of the State of Indiana to introduce in evidence State's exhibits 6, 6A, 6B, 6C, 6D and 6E, to the introduction of which exhibits the defendant, Paul Pierce objected as follows:

We want to seriously object to any conversation that this officer had with the defendants at this time unless it is first shown, or Mr. Pierce, rather, unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult with an attorney or advised that whatever he might say might be said against him and that he had a right not to make any statement at all and there is nothing here in this man's testimony, as yet, which shows that any conversation or statement Mr. Pierce might have made at that time was a

voluntary statement and in short, there has been no premise laid which would permit this witness, at this time, to testify to anything that Paul Pierce said about this occurrence, and for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge or any medical attention, he had received no instructions from any magistrate as to his constitutional rights, he had no representation, either family representation, or attorney representing him at that time to advise with him as to what he should do with regard to this questioning by this officer and his associates or that any statement made by Mr. Pierce in the presence of this officer or his associates, under the circumstances would be a violation of this defendants con-[fol. 145] situtional rights, and also that under *so* circumstances could the statement made by Paul Pierce, any statment made by Paul Pierce to this officer, out of the presence of Donald Joseph would be any evidence in this case as against Donald Joseph.

I want to further object because it is shown by the testimony of this witness that at that time the defendant, Paul Pierce, was wounded, was in physical pain and that under all circumstances, the exhibit was obtained while the defendant was under, while Paul Pierce was under duress, coersion and undue influence, threats and intimidation on the part of the police officers conducting the investigation.

To which objections the court after hearing evidence in the absence of the trial jury concerning the taking of said statement made the following ruling, towit:

"The court overrules the objection of the defendant, Paul Pierce to the introduction of said State's Exhibits 6, 6A, 6B, 6C, 6D and 6E and sustains the objection of the defendant, Donald Joseph to the admission of said exhibits."

Whereupon, said statement, being exhibits 6, 6A, 6B, 6C, 6D and 6E was admitted into evidence in the trial of this cause as against the defendant, Paul Pierce, in violation of article I, Section 14, of the Indiana Constitution and in contravention of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States

Constitution, as interpreted and construed by the United States Supreme Court.

[fol.146] 5. Error of law occuring at the trial in overruling the objection of the defendant, Donald Joseph to the question hereinafter set forth and propounded by the State of Indiana during the direct examination of Roy Pope, a witness called on behalf of the State of Indiana, and in permitting the said witness to answer the question, which question, objection and ruling of the court are in the following words:

Q. Relate the substance of the conversation, telling who said what?

To which question the defendant, Donald Joseph made the following objection:

Defendant objects to that question about the conversation unless it is first shown that these defendants were advised as to what their constitutional rights were and we want to establish that fact first, that their constitutional rights were not violated and whether they were taken before a magistrate and whether it was a voluntary confession or voluntary statement which they made. We object to any testimony on the part of this witness until those facts are established.

The court thereafter erroneously overruled the objection of said Donald Joseph and the State's witness, Roy Pope, was permitted to answer said question as to the defendant, Donald Joseph.

6. Error of law occuring at the trial in overruling the objection of the defendant, Donald Joseph to the offering of the State of Indiana to introduce in evidence state's exhibits 4, 4A, 4B, 4C and 4D, to the introduction of which exhibits the defendant Donald Joseph objected as follows:

[Fol. 147] We want to seriously object to any conversation that this officer had with Donald Joseph, unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult with an attorney or advised that whatever he might say might be said against him and that he had a right not to make any statement at all and there is nothing here in this man's testimony, as yet, which shows that any conversation

or statement Mr. Joseph might have made at that time was a voluntary statement and in short, there has been no premise laid which would permit this witness, at this time, to testify to anything that Donald Joseph said about this occur-ence, and for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention, he had received no instructions from any magistrate as to his constitutional rights, he had no representation, either family representation, or attorney representing him at that time to advise with him as to what he should do with regard to this questioning by this officer and his associates or that any statement made by Mr. Joseph in the presence of this officer or his associates, under the circumstances would be a violation of this defendant's constitutional rights, and also that under no circumstances could the statement made by Donald Joseph any statement made by Donald Joseph, to this officer, out of the present of Paul Pierce would be any evidence in this case as against Paul Pierce.

[fol. 148] I want to further object because it is shown by the testimony of this witness that at that time the defendant, Donald Joseph, was wounded, was in physical pain and that under all circumstances, the exhibit was obtained while the defendant was under, while Donald Joseph was under duress, coersion and undue influence, threats and intimidation on the part of the police officers conducting the investigation.

To which objections the court after hearing evidence in the absence of the trial jury concerning the taking of said statement made the following ruling, to-wit:

"The court overrules the objection of the defendant, Donald Joseph to the introduction of said State's Exhibits 4, 4A, 4B, 4C and 4D and sustains the objection of the defendant, Paul Pierce to the admission of said exhibits." Whereupon, said statement, being Exhibits 4, 4A, 4B, 4C and 4D was admitted into evidence in the trial of this cause as against the defendant, Donald Joseph in violation of Article I, Section 14, of the Indiana Constitution and in contravention of the Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution, as interpreted and construed by the United States Supreme Court.

WHEREFORE, the defendants, Donald Joseph, and Paul Pierce, separately and severally, respectfully ask that the court grant a new trial in this cause, and for all other and proper relief.

Donald Joseph, Paul Pierce, Ging and Free. (S.) Ging & Free by Waldo C. Ging, Attorneys for Defendants.

[fols. 149-153] IN THE HANCOCK CIRCUIT COURT

ORDER OVERRULING MOTION FOR NEW TRIAL—July 10, 1954

Thereupon, the court being duly advised in the premises now overrules the motion of Donald Joseph for a new trial and also overrules the motion of the defendant, Paul Pierce for a new trial, to which ruling of the court the defendants now object and except.

[fols. 154-167] IN THE HANCOCK CIRCUIT COURT

[Title omitted]

ORDER GRANTING APPEAL TO PROCEED AS PAUPERS—September 9, 1954

The court being duly advised in the premises now considers the verified application of Donald Joseph and Paul Pierce to be adjudged paupers and to be granted an appeal as poor persons herein to the Supreme Court of the State of Indiana; and the court now finds and adjudges that said defendants and each of them are paupers and indigents and have no funds or resources of any kind with which to take and perfect said appeal and the court now grants said appeal as poor persons and as paupers and indigents and now adjudges that all expenses of said appeal shall be paid by Marion County, Indiana; and the court now appoints Waldo C. Ging and Stephen A. Free, attorneys of Greenfield, Indiana, being the counsel of defendants in the trial of this case to advise and represent defendants and perfect said appeal and to represent them in all ways in said appeal; [fol. 168] and the court now orders that all bills of excep-

tions and transcripts of the record, including all longhand notes of the shorthand notes taken by the Official Court Reporter of this Court and all necessary disbursements for printing briefs herein and all other necessary costs and expenses incident to said appeal shall be had and furnished to said defendants for said purposes, all costs thereof to be paid by said Marion County, Indiana.

[fols. 169-170] Filed May 10, 1955 Mabel E. Lyons, Clerk.

IN THE HANCOCK CIRCUIT COURT

NOVEMBER TERM, 1954

No. 7668

STATE OF INDIANA

vs.

DONALD JOSEPH, PAUL PIERCE

Filed May 10, 1955

Samuel J. Offutt, Judge and a Jury

BILL OF EXCEPTIONS—Filed March 21, 1955

APPEARANCES:

FOR THE STATE OF INDIANA: Frank Fairchild, Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana. John H. Dailey, Deputy Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana. Thomas W. McKean, Prosecuting Attorney for the 18th Judicial Circuit, State of Indiana.

FOR THE DEFENDANT: Waldo C. Ging and Stephan A. Free.

[fol. 171] IN THE HANCOCK CIRCUIT COURT

NOVEMBER TERM, 1953

No. 7668

STATE OF INDIANA

vs.

DONALD JOSEPH, PAUL PIERCE

Samuel J. Offutt, Judge and a Jury

ORDER SETTING CAUSE FOR TRIAL—January 29, 1954

BE IT REMEMBERED, That on the 29th day of January, 1954, the same being the 62nd Judicial Day of the November Term, 1953, of the Hancock Circuit Court, Hancock County, State of Indiana, the following proceedings were had in the above entitled cause, before the Honorable Samuel J. Offutt, Judge of said Court, and a Jury, to-wit:

The cause being at issue, the same came for trial before the Court and Jury, Frank H. Fairchild, Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana, John H. Dailey, Deputy Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana and Thomas W. McKean, Prosecuting Attorney for the 18th Judicial Circuit, State of Indiana appearing as counsel for the State of Indiana and Waldo C. Ging and Stephan A. Free of the firm of Ging and Free, appearing as counsel for the defendants.

AND BE IT FURTHER REMEMBERED, That before the trial was begun, for the purpose of facilitating and expediting the trial of said cause, said Judge required to be present [fol. 172] Henrietta M. Watson, Official Court Reporter of said Court to take down in Stenograph, the oral evidence, including both questions and answers, note all rulings of the Court in respect to the admission and rejection of evidence, and the exceptions taken thereto, and the documentary evidence offered and introduced on the trial of said cause, the said Henrietta M. Watson, having been, at the time of her appointment, duly sworn to faithfully perform her duties as such Official Stenograph Reporter, which said appointment

and her official oath, as such reporter, are of and among the records of said Court.

And Be It Further Remembered, That said Official Reporter was present and took down in Stenograph the oral and documentary evidence given upon the trial of said cause, including both questions and answers, and noted all of the rulings of the Court with respect to the admission and rejection of evidence, and the exceptions taken thereto.

And the defendants, Donald Joseph and Paul Pierce, having requested said Official Reporter to furnish them with a complete transcript of the evidence, objections, rulings of the Court thereon, and the exceptions taken thereto, including all documentary evidence, a typewritten transcript of the same was made by said Official Reporter, which typewritten transcript is in the words and figures following:

That Is to Say:

[fol. 173] And Here, The State of Indiana, to Maintain and Support the Issues in Its Behalf, Gave and Introduced the Following Testimony:

That Is to Say:

Russell Chatham called to the witness stand as a witness in behalf of the State of Indiana, and having been duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief, such examination in chief being co ducted by Frank H. Fairchild, Prosecuting Attorney for the 19th Judicial Circuit, State of Indiana.

Q. Will you please state your name to the Court and Jury?

A. Russell Chatham.

Q. Where do you live?

A. Fairfax County, Virginia.

Q. Is that near Washington, D. C.?

A. Yes sir.

Q. How old are you?

[fol. 174] A. 49.

Q. What is your business or occupation?

A. Personnel Consultant.

Q. What do you do as a personnel consultant?

A. Conduct lie detector tests, examinations, we don't like to call it that, that is the common term.

Q. For how long a period have you conducted polygraph or lie detector examination?

A. Approximately 16 years.

Q. How long have you operated your business over in and near Washington, D. C.?

A. I have had an office in Washington for approximately five years.

Q. And before that, where did you have an office, if you had one?

A. Oak Ridge, Tennessee.

Q. What was your job at Oak Ridge, Tennessee?

A. Conducting polygraph examinations in connection with the security program of the atomic energy commission.

Q. Briefly, what is a polygraph examination?

A. Well, polygraph, common terminology is what they call lie detector tests.

Q. Did I understand you to say you gave those to prospective employees at Oak Ridge?

A. Prospective employees and other employees having access to certain classified material and so on on a periodic basis.

[fol. 175] Q. That in connection with the atomic energy plant there?

A. Yes sir.

Q. Now, directing your attention to the year 1935, will you please tell the court and jury what your occupation was then?

A. I was detective sarge-nt with the Indianapolis Police Department.

Q. How long had you been on the police force in 1935?

A. 5 or 6 years, something around 5 years.

Q. Were you assigned to the Detective Division, is that correct?

A. Yes sir.

Q. As a Detective, you may state whether or not you wore a uniform or regular business cloth-s?

A. In the Detective Division, you wear civilian, ordinary business cloth-s' street clothes.

Q. And as a Detective Sargent assigned to the Detective Division, of the Indianapolis Police Department, what were your duties, briefly, Mr. Chatham, during the time you were detective?

A. Detectives are generally investigative, officers investigating complaints of all types of reported law violations bordering felonies, murder, rape, larceny and so on, conducting investigations of those charges.

Q. During the year 1935, you may state whether or not you had a partner working with you?

A. I did.

[fol. 176] Q. Is that the way that the Indianapolis Police Department at that time, and I believe at this time, operates in a pair or team of two men?

A. At that time the Detectives operated in teams.

Q. Who was your partner in the year 1935?

A. Orville Quinnette.

Q. For how long a period of time had he been your partner?

A. I think New Years Day, January, 1935, we were assigned together.

Q. Now, directing your attention particularly to the 7th day of December, 1935, in the early afternoon thereof, would you please tell the jury what, if anything, you were doing on that date, I mean during the entire day? Or, directed more particularly to the early afternoon, I think, of that date?

A. We were called into the Detective Office by Chief Frederick Simon for consultation with two officers from Anderson, Indiana, I think their names were Russell and Ryan, had us to talk to them regarding an investigation of a car which had been stolen in Anderson, Indiana just a short time prior to that, I don't remember the exact dates, and that they had found——

To which answer and to the conversation referred to, the defendants, by counsel, separately and severally interposed an objection.

[fol. 177] By the Court: Objection sustained.

A. in connection with the investigation of some articles that had been found in an apartment in Indianapolis and asked us to investigate how these articles happened to be in this particular apartment, which apparently were articles owned by——

To which answer, the defendants, by counsel, separately

and severally interposed an objection for the reason it would be a conclusion on the part of the witness.

By the COURT: Strike out apparently.

Q. Just what you know.

A. Articles that were left in the car that was stolen from this insurance agent, it was an insurance agent's car that was stolen in Anderson.

Q. You say we had been called in, you refer to you and your partner?

A. Yes, Quinnette.

Q. What, if anything, did you do?

A. Well, after getting the information from the Anderson officers, they accompanied us to the downtown section, I think in the neighborhood of Pennsylvania and Market Street in Indianapolis, pretty well to the center of the down-[fol. 178] town section and we let the two Anderson officers out there and we continued on out to the Hazen Dell Apartments at 12th and Park Avenue to try to conduct this investigation.

Q. All right now, who was still with you?

A. Orville Quinnette and I.

Q. Would you please describe to the Court and Jury the location of the Hazel Dell Apartments as to where it was located and what it was and so forth?

A. It is on the northeast corner of 12th Street and Park Avenue in Indianapolis. 12th Street is 12 blocks or approximately 1.2 mile north of the east and west dividing Street of Washington and I think about 8 blocks or 9, something like that, east of Meridian Street, the other dividing line, not too far out of the mile square as they call it in Indianapolis.

Q. How tall a building is it, if you know, how many stories?

A. Three-story building.

Q. You may state whether or not you were assigned to interview or make an investigation of some particular individual, you were given a name, in other words?

A. Yes we were.

Q. What was that name?

A. The name was Coleman.

Q. What, if anything, were you supposed to do concerning Mr. Coleman?

A. We were to talk to Mr. Coleman about why these articles that had been reported found in the apartment and why [fol. 179] they were found in the apartment, how they got there, articles which were taken from this stolen car in Anderson.

Q. When you went there, had you been given a warrant, or did you have a warrant for the arrest of anybody, Mr. Coleman, or anybody else in that apartment?

A. We didn't go to arrest, we didn't have a warrant.

Q. What was the purpose of your visit to this particular apartment at the Hazel Dell Apartments?

A. What we would call a routine investigation.

Q. Now, did you have a search warrant of any kind?

A. No sir.

Q. What did you do when you first, you and Orville Quinnette first arrived at the Hazel Dell Apartments?

A. We walked into the building and looked at the directory for the location of apartment 5, I think was the number of the apartment, and there were two entrances on each floor, 3 floors. This apartment 5 happened to be on the Third Floor. We went in the apartment, I was ahead of Orville, Mr. Quinnette, on the stairs and knocked at the door of apartment No. 5.

Q. Did you say that was located at the Third Floor?

A. Third Floor, right, going in from the Park Avenue entrance.

Q. Could you describe briefly the steps up which you went and what the apartment, how it is located with reference to the steps?

[fol. 180] A. The steps going in from the Park Avenue entrance, I don't know exact number of steps, approximately a half dozen, to the landing and a half dozen between each floor, 12 to 14 steps total amount of steps between each floor.

Q. And the door at which you arrived, apartment No. 5, where is that located with reference to the top step?

A. Immediately to the right at the top step.

Q. You may state whether or not there is a landing of some kind in front of the door and at the top of the stairway.

A. There is a landing.

Q. Describe it briefly.

A. I think approximately five feet from the landing of the stairs to the blank wall and the door to the apartment off to the left and over here would be between 6 and 8 feet across that.

Q. Now, you and Orville Quinnette got to the top of the stairs, what did you do then?

A. I knocked at the door.

Q. What, if anything, took place then?

A. Nothing, we waited a while. I knocked, I think two or three knocks, a couple of times, between possibly a half a minute interval or more and no response and we went down stairs.

Q. What did you do then, Mr. Chatham?

A. We walked around to the 12th Street side of the apart-
[fol. 181] ment trying to locate where the custodian, if one might be, and we found an entrance to the basement of the apartment off of the 12th Street side where we did locate the custodian of the apartment.

Q. You may tell what occurred then.

A. We talked to the custodian and identified ourselves and said we would——

And here, the defendants, by counsel, separately and severally interposed an objection to any conversation.

By the COURT: Objection sustained as to any conversation, just what you did.

A. We had the custodian to go up stairs again to apartment 5 bringing a key.

Q. Do I understand that you and the custodian and Orville Quinnette went back up to the Third Floor?

A. Yes sir.

Q. What did you do then?

A. Before trying to unlock the door, I knocked at the door, let's knock again, they may be home.

Q. Now, you knocked again and what, if anything happened then?

A. In a matter of a few seconds the door was opened and a slight ways and then was opened a little bit wider and what I assumed an invitational manner——

[fol. 182] By the COURT: Strike out "I assumed an invitational manner". Don't pass your comments on the testimony. Just tell what was said and done.

Q. You say it was opened a little at first and then wider?

A. Then wider, yes.

Q. Would you describe a little more in detail, if you can, the method and the manner in which the door was opened, as you observed it?

A. The door was opened, that had to be by turning the knob, as I knocked on the door and the door didn't come open with the knock, so the door was opened from the inside.

Q. From the inside?

A. Yes.

Q. Did you observe a man on the inside as the door was opened?

A. Yes sir.

Q. Did you or any of your party have your hand on the door knob when the door was opened?

A. No sir.

Q. What did you do then?

A. I stepped into the room which was the living room.

Q. Where was Detective Orville Quinnette?

A. He followed me in the door immediately behind me.

Q. Can you describe to which side of you he was standing on?

[fol. 183] A. He was to my left after turning, going into the door.

Q. You stepped in the doorway and Orville Quinnette was at your left, is that correct?

A. That is right.

Q. Please tell the jury what happened next?

A. I looked up and there were two men standing there. I asked the question, which one is Mr. Coleman. They both said, I am. I said, we are from the Detective Office and I'd like to talk to you a minute. At that time, Paul Pierce said, stick them up, son of a bitches and then the shooting started.

Q. Then, these two men that you saw in the room, Mr. Chatham, on December 7, 1935 in Indianapolis, Indiana, the room about which you testified, do you see these men in the Court Room today?

A. Yes sir.

Q. In order that there won't be any question about which you are pointing, be kind enough to step down off the stand and point out the defendants in the Court Room today?

A. Yes sir. This is Paul Pierce, that I know is Paul Pierce on my right, middle table, light shell-rimmed glasses and this is Donald Joseph, with the other glasses and gray hair and polky dot tie.

Q. I'll ask you, Mr. Chatham, if these men which you have just pointed out in the Court Room as Paul Pierce and Donald Joseph, were the men that you saw and observed [fol. 184] in this apartment 5 in the Hazel Dell Apartments that day you and Orville Quinnette were there?

A. Yes sir.

Q. Please describe how these men were standing with relation to you and Quinnette. You have described Quinnette was to your left as you and he stood there in the doorway.

Q. Describe how these defendants, these men were standing with relation to you and Orville Quinnette.

A. I was approximately 5 or 6 feet inside the door in front of a davenport which was setting against the wall immediately to the right going in and Quinnette was to my left and facing them. Donald Joseph was in front of me and Paul Pierce was in front of Orville Quinnette, I would say 2 or 3 feet apart, something like that.

Q. You spoke of Pierce as pulling a gun, would you please describe the gun as you observed it, if you did, and where he obtained it from?

A. The gun, I don't know where it came from. The first I saw it was in his hand and the best I could tell, it was a nickel plated gun from my position.

Q. That was in whose hand?

A. Paul Pierce's hand.

Q. And when did you see the gun with reference to the time that you said, we are from the Detective Office and want to talk to you a minute?

A. About the time, I would say, that I got the words out [fol. 185] of my mouth.

Q. You next saw the gun, is that correct?

A. Yes.

Q. And then, did one of the defendants then say something?

A. Paul Pierce.

Q. What was it that he said?

A. Said stick 'em up, you son of a bitches.

Q. What, if anything, happened then?

A. Well, there were shots fired and Donald Joseph was standing in front of me and stepped over and Donald Joseph and I grappled and fell on the davenport, I fell under him on the davenport which was a foot or so behind me.

Q. Now, at the time Paul Pierce had the nickel plated revolver in his hand and said, stick them up you sons of a bitches, please describe to this jury how Orville Quinnette was standing and what his position was beside you?

A. The last I saw or noticed him standing beside me, I was doing the talking and he was standing in a normal position, posture with his arms hanging down.

Q. Would you say his arms were at his side?

A. Yes, the way I saw them, they were at his side the last I saw of him.

Q. Then you say there were shots fired?

A. Yes sir.

Q. Can you describe a little more in detail about that?

A. Well, in hearing the shots, Quinnette fell back, whether [fol. 186] he hit the davenport, I'm not sure, I knew that he did fall back and then another explosion or shot and I noticed Paul Pierce turn around while I was, had engaged otherwise, Paul turned around, apparently went down to his knee and then back up.

Q. What did you observe Quinnette do, if anything?

A. The only thing after that, I recall observing Quinnette was when he went out the door of the apartment.

Q. What did you do then?

A. I was scuffling with Donald Joseph and as soon as I could get hold of my gun, I fired, which I later learned grazed Donald's stomach and in holding on, I got up onto the floor in a standing position, both of us still holding on to each other and I got around and my gun in my hand and shot again under his arm.

Q. What did he do or say, if he did anything?

A. His head, when I shot the second time, his head fell back on my arm and said, don't shoot any more buddy, I'm done for.

Q. What did you do?

A. I was still holding onto him and stepped to the door and then I heard a shot from across the room and I let him drop right at the larding of the door, so I about half turned

around and tumbled around and catch myself and get to the landing between the third and second floor and then go on to the second floor landing and wait there.

[fol. 187] Q. Now, you may state whether or not you were hit by a shot?

A. Yes I was.

Q. Where were you hit?

A. In the left foot.

Q. And what sort of a wound was it, can you describe it?

A. It took the flesh off the toe next to the big toe on my left foot.

Q. That require later some hospital treatment for you?

A. Yes, I was infected 24 days, I think.

Q. No, we left you on the second floor landing, tell the Court and Jury what took place then as you saw and observed?

A. The first thing I observed from there, was on the outside was when I heard a motorcycle drive up and I looked through the window at the landing saw police officer Ray Moisner pulled up and some man, who I did not know, was walking by the side of Quinnette and holding a tourniquet or bandage around his arm. Then, shortly after that, the other officers came we reentered the apartment.

Q. Did you observe Quinnette later that same day?

A. That was the last time I ever seen Quinnette.

Q. Did you that same day see the defendants, Pierce and Joseph again?

A. That was the last.

Q. Did you remain on the landing on the second floor landing?

[fol. 188] A. Until the other officers came. No, I change that, I went back to the landing between the Second and Third Floor thinking that——

Thereupon, the defendants, by counsel, separately and severally, interposed an objection.

By the Court: Objection sustained. Strike out Thinking that.

A. I came back to the landing between the Second and Third Floor and in seeing no one laying on the landings, I returned to the Second Floor as the police came, the other police, the other investigating officers, I stepped out in front

of the apartment building and was greeted by the other officers.

Q. When you were on the Second Floor landing, did you see or observe anybody come out of the Apartment 5 on the Third Floor?

A. No sir.

Q. All the facts that you have testified about, did they take place in Indianapolis, Marion County, Indiana on or about December 7, 1935?

A. Yes sir.

Q. Before this December 7, 1935, when you and Orville Quinnette went to the Hazel Dell Apartments and to the Third Floor apartment, had you ever seen either of these defendants before that day?

[fol. 189] A. Not to my knowledge.

Q. And at the time you went to the Hazel Dell Apartments with Orville Quinnette on that day, did you know that either of these defendants was in that apartment?

A. No sir.

Q. Mr. Chatham, I'll hand you what has been marked State's Exhibit No. 1 and ask you if that is a fair representation of the Hazel Dell Apartment building located on the northeast corner of 12th and Park Avenue, Indianapolis, Indiana as it appeared on December, 1935?

A. I would say that it is.

And here, the State of Indiana, by counsel offered to introduce in evidence and exhibit to the jury, the picture above referred to which was marked for the purpose of identification as State's Exhibit No. 1.

By Mr. Ging: No objection.

And now, the State of Indiana by counsel, introduced in evidence and exhibited to the jury, the picture above referred to which was marked for the purpose of identification as State's Exhibit No. 1, which exhibit was and is as follows:

[fol. 190] State's Exhibit No. 1 (Omitted in printing)

[fol. 191] Q. Russell, you come down here just a moment. Holding this up to let the members of the jury see it, would you point out the location of the apartment wherein this took place about which you have testified?

A. I would say it was, this is the Park Avenue entrance and it was the corner apartment on the Third Floor.

Q. Now, there is an arrow there indicating an apartment, you may state whether or not that arrow indicates the apartment about which you have testified?

A. The apartment here is the apartment. The apartment runs the full length, that indicates the apartment.

Q. The windows on the top of the Third Floor are all in Apartment #5, is that correct?

A. Yes.

Q. Did you return to the Apartment #5 at any time after the other officers arrived at the scene?

A. Yes sir.

Q. What did you do when you went into the Apartment No. 5?

A. As we walked in, I recognized a gun on the floor which I picked up and I turned it over to Lieutenant Roy Pope and then there was a nickel.

Q. Could you describe that gun a little more?

A. 38 Special, identified as a Detective Special with a two-inch barrel. It was a blue steel barrel with a nickel frame.

Q. Whose gun was that, if you know?

A. That was Orville Quinnette's gun.

[fol. 192] Q. And where did you find that?

A. On the floor in front of the davenport about where the scuffle was taking place.

Q. Now, tell what else you saw or observed, if you did?

A. I picked up another gun, a nickel plated gun and handed it either to Lieutenant Pope or one of his squad. I picked up two guns in all and handed them over.

Q. Can you describe the second gun a little more?

A. Nickel plated gun, I didn't examine it, it was a small revolver and I would guess, just from picking it up, would be a 38 caliber revolver. I didn't examine the gun, I turned it over to Officer Pope.

By Mr. Fairchild: You may cross-examine.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Mr. Chatham, how long had you been a member of the Indianapolis Police Department in December of 1935?

A. About five years.

Q. And Mr. Quinnette had been your partner since the first of January of that year?

[fol. 193] A. Yes sir.

Q. Now, you are no longer associated with the Indianapolis Police Department, as I understand it?

A. No sir.

Q. When did you quit?

A. In 1941.

Q. And you have been living outside of the State of Indiana since that time?

A. No, not all the time.

Q. But you have been for some years now, have you?

A. Yes, since February of 1946. I maintain an Indianapolis address.

Q. Your business professionally is, in street parlance at least, lie detector business, is that right?

A. That is right.

Q. Is your entire clientele government business?

A. No sir.

Q. You do private work for other people, do you?

A. Yes sir.

Q. You say you had never seen these two men before this particular day?

A. Not to my knowledge, I never had.

Q. And when you went to the apartment, neither you nor your partner, Mr. Quinnette, had any warrant or paper of any kind, did you, issued by any magistrate or public official of any kind?

A. No sir.

[fol. 194] Q. As I understood you, you went there dressed as ordinary civilians, no visible badge or insignia of any kind indicating that you were police officers?

A. We were in civilian clothes.

Q. Ordinary top coat or overcoat, did you?

A. Yes sir.

Q. You each carried guns, did you?

A. Yes sir.

Q. But they were carried how, in your pocket on your hip?

A. Mine was under my overcoat on the belt.

Q. Fastened to your belt on your left hip, reach around and get it or did you shoot right or left handed?

A. I shoot right handed, I had it on my right hip.

Q. But it was under, fastened to the belt of your trousers and under both coats, under your ordinary suit coat and your overcoat, is that true?

A. Yes sir.

Q. And Mr. Quinnette, was he armed similarly to you?

A. Mr. Quinnette was armed.

Q. Did you just each have one gun or did you have more than one gun on you?

A. We both only had one gun apiece.

Q. At that time those guns were loaded were they with bullets?

A. Yes sir.

Q. Now, you went up to the apartment, as I understand you, and walked up or was there an elevator?

[fol. 195] A. Walked.

Q. Where was the entrance or the entrance that you used into this building, what street was it on?

A. Park Avenue.

Q. From Park Avenue, that ran north and south?

A. Yes sir.

Q. Past the front of the building, and you walked up the three flights of stairs and when you got to the third floor, now, with reference to the head of the stairs that you used, where was this apartment or where was the entrance to the apartment?

A. The entrance to the apartment 5 was immediately after the top step of the landing, just almost a matter of inches to where the door opens into the apartment.

Q. What size landing is there there that permits a person to wait, if they have to wait, for entrance to the apartment?

A. I estimated say 4 to 5 feet wide and maybe 6 to 8 feet across.

Q. Was it immediately in front of you as you walked up to the apartment or right or left?

A. You step off onto the landing and a railing, was at that time, a railing across the left and this landing area, maybe 25 square feet would be involved maybe in the landing, then——

Q. Where was the door with reference, where would you reach for the door after you got onto the landing, where [fol. 196] was it?

A. The door was immediately to the right and in facing the door, the door knob was to the right.

Q. Now, on your first trip, you and Mr. Quinnette went up the stairway and knocked and there was no entrance?

A. That is correct.

Q. You weren't able, or didn't enter at that time?

A. That is right.

Q. And so far as you know, there was no one in the apartment at that time?

A. That was our——

Q. And then, as I understand you, you went back downstairs and made some search for the janitor or care taker or what have you?

A. Yes sir.

Q. How long did that take?

A. Oh, I would say not five minutes probably the most, matter of minutes.

Q. All right, during that five minutes, did you see anyone enter that apartment building or go up the stairway to the apartment?

A. No sir.

Q. Were you so you could see any use that might be made of the stairway after you went downstairs?

A. No we weren't.

Q. Were you outside?

A. Inside.

[fol. 197] Q. All the time inside?

A. In our discussion with the custodian we were inside.

Q. Where did you go, down in the basement?

A. I would say it was a sub-basement, about 4 or 5 steps off of the street level.

Q. But you saw no one, where was the stairway that took you to the third floor, where was it with reference to this

stairway into the sub-basement, you have talked about?

A. It was around the corner on the 12th Street side of the apartment building.

Q. How far would you say it was from the foot of the stairway, the main stairway?

A. May I look at the picture for reference?

Q. Yes.

A. Probably 75 feet, something like that.

Q. The entrance to the basement was 75 feet from the front stairway?

A. The best I could estimate from here.

Q. Then, did the custodian, after you talked to the custodian, did he go back upstairs with you?

A. Yes sir.

Q. And he had some pass keys, did he?

A. Yes sir.

Q. When you got back up there, didn't the custodian try to put his key or did put the key in the lock to unlock the door, or did you remember?

[fol. 198] A. He started to put his key in the door but didn't.

Q. He didn't, and do you know whether he took hold of it, before he started to put his key in the lock, did he take hold of the door knob to see if it was, if it would open without the benefit of a key?

A. No sir. I didn't see him do that.

Q. Where were you standing, who was immediately in front of the door, the door knob, that part of the door which would first open?

A. I was closest to the door. In fact, I might say standing against it, against the door facing it and the custodian a little behind and Mr. Quinnette still around to his left.

Q. If the custodian was attempting to put his key into the lock, he was right in front of the lock, wasn't he or right in front of the door, of the lock and the door knob?

A. He would have had to reach past me.

Q. Oh, he would reach around you, were you standing immedately in front of the door knob and the lock?

A. The door knob isn't, where the door knob comes up isn't any more than a matter of 3 or 4 inches beyond the top of the landing and he was behind me, I was standing in front, what we would call in front of the group of the three of us.

Q. You think then that the janitor in order, care taker, whatever you call him, in order to put the key in the lock [fol. 199] would have had to reach around you like that?

A. Not around me, reached in front of me or past me.

Q. In front of you?

A. Past or beside of me.

Q. Did the care taker ever get the key in the lock?

A. No sir.

Q. Now then, Mr. Chatham, that has been more than 18 years ago, hasn't it.

A. Yes.

Q. You were on the police force for about 5 or 6 years after this occurrence, weren't you?

A. Yes sir.

Q. And were you a detective actively engaged with the Indianapolis Police Department for those 5 or 6 years?

A. Yes sir.

Q. And you made, as a police officer and as a detective, both before and after this transaction, that was your business to make these routine, as you say, routine investigations?

A. Yes sir.

Q. And you made dozens and hundreds of them in that particular year, particular period of time, didn't you?

A. I would say so.

Q. Thousands of them perhaps, always with a partner, weren't you?

A. No.

Q. Sometimes you operated by yourself?

[fol. 200] A. Yes sir.

Q. But the usual procedure was for police detectives to go in pairs?

A. Yes sir.

Q. And since this and the other trial, you were here in the other trial?

A. Yes.

Q. A couple or three months ago?

A. Yes.

Q. And you have then and now, in preparation for this trial, have consulted with the Prosecuting Attorneys and told them what your testimony would be, the various items of it?

A. Frankly I haven't.

Q. Didn't you before the other trial?

A. I was asked concerning certain facts of the case.

Q. Have you consulted and recounted the details and talked with your fellow police officers about the facts in this case?

A. Frankly this time I haven't.

Q. Before the other trial in 1953, in November of 1953 you did do that then?

A. We did rehash some of the details.

Q. You rehashed the details at that time?

A. Yes.

Q. And any of the details which you might have forgotten in the 18 years were recalled to your attention back in [fol. 201] November of 1953, is that right?

A. No, not mine weren't.

Q. Well, the case was discussed by the former police officers and lot of police officers who had something to do with this transaction at that time, that was all gone over in detail at that time, wasn't it?

A. I wouldn't say detail, I would say general conversation.

Q. I believe you had five years of police work and police investigation before this occurred, you had 5 or 6 years after this occurred?

A. This is right.

Q. And it has been 18 years since the occurrence now, little over 18 years?

A. That is right.

Q. You entered the apartment and Quinnette, as I understand you, was beyind you and to your left, is that right?

A. In going in, yes sir.

Q. What size, what width door was that?

A. Just average dwelling house size door.

Q. About 30 inch doorway would you say?

A. I'm not much of a builder, I don't know.

Q. Was it wide enough to admit the entrance of two persons at once, at one time, with shoulders as broad as yours?

A. I wouldn't say two people could walk through it at the same time.

Q. You think you walked in the apartment first?

[fol. 202] A. I did walk in first.

Q. Quinnette followed you and a little to your left, you say?

A. That is right.

Q. How far behind you do you think he was when you stepped into the apartment?

A. Well, I didn't get in more than 5 or 6 feet and he was within, I'd say almost a foot at the side of me.

Q. At all times he was behind you up until after the thing was over, maybe most of the time he was behind you?

A. No, when we got in the apartment, he was at the side of me.

Q. What size was this room that you entered that was the living room as I understand?

A. Yes. I think I estimated it before at about maybe 12 by 15 to 18. There is an addition to the living room of sort of a sun porch and the actual dimensions would be a little reluctant to try to give.

Q. The liv ng room, according to that picture then, faced where the windows are, evidently faced south on 12th Street, did it?

A. Well, it would face south and west.

Q. There were windows on the west side of the living room too were there?

A. Not the living room that I recall but in the apartment, the sun porch.

Q. You know how many rooms there were in that apartment?

[fol. 203] A. I later learned that there was, besides the sun porch and living room, later that day, there was another bedroom and kitchen.

Q. Now, where was this davenport that you say played some part in the proceedings, where was it with reference to the entrance, the doorway where you entered the apartment?

A. In going into the door, the door opened back to the left and step in with giving clearance for the door, I would say the davenport, the end nearest the door was, might have been 12, 15 inches from there and against the wall which would be to your right or the west wall of the living room.

Q. The davenport, as I understand, would be to the left as you entered the apartment, sort of behind the door?

A. No, be to my right and walking in the apartment, to

my right, the door, you face the door you are heading south and on the west side of the living room, which would make it to the right.

Q. And at that time, you didn't have a gun, did you, I mean a gun in *site* in your hand at that time?

A. No sir.

Q. When did you hear the first explosion or shot?

A. Well, it was almost simultaneously with, by the time I had got through with what I had to say and——

Q. You know who——

By the Court: Let him finish his answer.

[fol. 204] Q. Go ahead and finish your answer.

A. The shot was almost simultaneous with the words, told us to stick them up.

Q. You know who fired the first shot of your own knowledge?

A. Paul Pierce.

Q. Where was he when the shot was fired?

A. Oh a matter of approximately 2 feet maybe in front of Orville Quinnette.

Q. Well, at that time had you started grappling with Joseph?

A. That was almost I would say simultaneous with the shot being fired, Joseph and I grappled."

Q. You never did see Joseph have a gun in that apartment that day, did you?

A. No sir.

Q. And Joseph was the one of the two nearest you and Pierce was more in front of Quinnette, is that the picture?

A. That is correct.

Q. Who made the first rush or who took hold of the other first, you or Mr. Joseph, can you remember that?

A. At the time of the shot, rebuilding the thing, Donald Joseph stepped towards me and we grabbed each other.

Q. And you then, at some time during the match, wrestling, or whatever you call it, you fell on the davenport, is that true?

A. Yes sir.

[fol. 205] Q. Did you fall on the floor or did you fall on the davenport first or did you ever get on the floor, the two of you in your wrestling.

A. No sir.

Q. Then, as I remember, your testimony, you were underneath of Mr. Joseph?

A. That is right.

Q. When you fell on the davenport and then you worked around and got your gun and shot him across the stomach?

A. Yes sir.

Q. Where was Paul Pierce, where were Pierce and Quinnette at that time, do you know, while you were wrestling and trying to get your gun and did get it, where were they?

A. During the first part of that short time, Quinnette was to my left and was either on the floor or the davenport, he wasn't in a standing position for at least an instant that I saw him and the only time that I saw Paul, when the both of them were to my left, was when he turned around, apparently went down, stooped or slipped or fell and then stood up again.

Q. Was that after Quinnette had shot him once, or do you know?

A. I don't know. I can't assume.

Q. You know how many shots were fired all together?

A. Only from what I have been told.

Q. How many shots did you fire?

[fol. 206] A. Two.

Q. The first shot, as you say grazed Mr. Joseph's stomach and the next shot, where did it hit him?

A. As I later learned or have been told that it went in under his left arm pit and apparently hit a rib and followed around and came out somewhere along his back.

Q. When you shot then, the second time, then is when Joseph said, you have got me buddy, don't shoot any more?

A. Said, don't shoot any more buddy, I'm done for.

Q. Where were you when you had that conversation with Joseph?

A. We were standing just almost by the door and both of us holding on to each other.

Q. Was there any resistance on the part of Joseph at that time?

A. Not after I shot him, no.

Q. Did you see him at any time, Mr. Chatham, you said you didn't see him with a gun in his hand, did you see him

make any effort to get a gun during the time you were in the apartment there, I mean Mr. Joseph?

A. No sir.

Q. Now, when Joseph said to you, don't shoot, I'm done for, where was Officer Quinnette and Paul Pierce at that time, where were they?

A. Quinnette had gone out the apartment door. I saw him leave the apartment door.

Q. He went out of the apartment before you did then, is [fol. 207] that true?

A. Yes sir.

Q. At the time Quinnette went out the apartment door, where was Paul Pierce?

A. At that time he was over towards the south, what I would call the south end of the living room.

Q. He was still in the apartment then?

A. Yes sir.

Q. Then you were in the apartment alone for some time with these two defendants, were you?

A. A very short time.

Q. And was there any effort while you were in the apartment——

By Mr. Ging: Withdraw that.

Q. While you were in the apartment, after Quinnette left, were there any shots fired that you remember?

A. Yes sir.

Q. Who shot, do you know?

A. It wasn't Donald Joseph. It came from across the room and hit the wall near the door and that is when I let go of Donald Joseph.

Q. Was Quinnette in the apartment or outside the apartment at that time?

A. He was outside and gone.

Q. When you entered this apartment, these men that you have identified, did they have their overcoats on?

A. Yes sir.

[fol. 208] Q. And do you know whether they had their hats on or not?

A. I remember, I'm sure one of them did, whether both of them did, I don't recall as to the hats.

Q. You don't remember where the nickel plated revolver, that you have testified about, where it came from. You know Pierce had it, where he got it you don't know, is that right?

A. No, I don't know.

Q. Where is that revolver now, do you know?

A. I don't know.

Q. Have you seen it, did you see it at the other trial last November?

A. No sir.

Q. Now, did the custodian ever go into the apartment?

A. Not while we were there.

Q. Do you know that custodian's name?

A. No sir.

Q. Have you seen him since that time, that day that you know of?

A. Not to my knowledge.

Q. Did you see in that apartment at the time or while Paul Pierce or Joseph were in the apartment, any gun in the hand of Donald Joseph?

A. No sir.

Q. The only gun *had* then was used, was the gun that Paul Pierce had, you say was the nickel plated revolver?

A. There were three guns used.

[fol. 209] Q. I mean on the part of these two defendants?

A. Yes sir.

Q. You had a gun and Quinnette had a gun and Paul Pierce had a gun?

A. Yes.

Q. How many shots did you say you think were fired? I don't believe I asked you that.

A. I don't know only I know how many I fired.

Q. You fired two?

A. And the other was introduced in evidence that I was not, I didn't have an actual count.

Q. You don't know how many you heard?

A. No.

Q. There were several shots fired, you think?

A. Yes sir.

Q. And by whom, you don't know who all fired the shots, of your own knowledge then, the number of shots?

A. I know between Paul and Quinnette there were several shots fired. In Quinnette's gun, if I remember right, there

were two exploded shells, and the gun, the nickel plated gun picked up there were 4 or 5, I think exploded shells.

Q. At that time, Mr. Officer, pardon me, you are not an officer now, at that time, you and Mr. Quinnette went to the apartment, every chamber in your revolver was loaded and his too, as far as you know, was it?

A. Mine was, I feel sure his was.

[fol. 210] Q. You don't know how many shells were in the gun that Pierce had at all, do you? I mean unfired shells at the time you entered the apartment?

A. I couldn't testify to that.

Q. Mr. Quinnette ran down the stairway, as I understand you, the next time you saw him, when did you see him, when he was walking down the street with a tourniquet on?

A. That was through the window, from the building.

Q. From which floor now?

A. It was either the landing between the second and third floor or the second floor landing, I'm not sure. It was through a window facing Park Avenue.

Q. And did you leave the apartment before Pierce and Joseph did?

A. I don't know.

Q. When you went out of the living room, or, were you in any other room of that apartment excepting the living room?

A. No sir.

Q. When you went out of the living room to go downstairs and when you did leave the living room, you did go downstairs, is that right?

A. Yes sir.

Q. When you left the living room, were Pierce and Joseph still in the living room?

A. I thought that Joseph was laying on the platform, the [fol. 211] landing of the third floor.

Q. Half way between the second?

A. No, right out, immediately outside of their door in the doorway.

Q. Then, when you went out of the building or out of the apartment, Joseph was, you think, was just outside the door and on the landing?

A. Yes sir.

Q. And do you know where Pierce was at that time, was he still in the living room?

A. The last I knew, he was.

Q. And that is the last time, then you ran on down the stairway, left, thinking you left the two of them up there?

A. I was thinking that Joseph was on the platform and Pierce in the apartment.

Q. And by that time, as I remember, your partner, Officer Quinnette was down on the street?

A. Yes sir, he had left the building.

Q. Well, what is the fact, did you go on down the stairway, all the way down to the street or out onto the street, or do you remember?

A. Probably a matter of 3 or 4 minutes, or something like that, I got out on the walk but I don't know just how many minutes, maybe five minutes, might have been.

Q. Well, when you went down the stairway, followed Quinnette down after he was shot, and you left Joseph, you [fol. 212] think, lying on the landing and Pierce, you think, was still in the apartment, is that the last time you saw those men that day?

A. Yes sir.

Q. Now, you went, as I understand you, you went down the street or down onto the street there 3 or 4 minutes, then you went back up to the apartment with other police officers, is my understanding, am I correct?

A. Yes sir.

Q. Then you found Officer Quinnette's gun?

A. Yes sir.

Q. Or one that you thought was his, anyhow, it was a gun ordinarily carried by a detective?

A. Yes.

Q. And you also found a nickel plated revolver?

A. Yes sir.

Q. And it is your opinion now that was the gun that Pierce had during the altercation, is that true?

A. Right.

Q. You see any other guns in that apartment, other than what officers carried in, I mean?

A. I didn't stay in the apartment to conduct the investigation and I can't truthfully say if I did or not. It seems I saw a gun on the bed on the sun porch, I can't honestly testify that I did, because I don't remember.

Q. You don't know whether that was put there by some officer or whether you remember definitely whether there [fol. 213] was one there?

A. I'm sure there was one there, I don't recall having seen it, I mean on the bed.

Q. Was that in the living room?

A. You might call it part of the living room, sort of a sun porch, bedroom affair.

Q. Were there doors, french doors or something opening from the living room on to it?

A. From what I saw, it was all open.

Q. Mr. Chatham, on April 11, 1945, did you write a letter on personal stationery or business stationery addressed to Mr. Donald Joseph, Indiana State Prison, Michigan City, Indiana?

A. I have written a letter to him, I don't recall the date.

Q. I'll hand you Defendants' Exhibit A and ask you to examine it and tell the jury whether or not you wrote that letter and addressed it to Mr. Donald Joseph?

A. I did.

Q. That was dated April 11, 1945?

A. That is right.

(And here, the defendants, by counsel, separately and severally offered to introduce and read in evidence the letter above referred to which was marked for the purpose of [fol. 214] identification as Defendants' Exhibit A.)

By Mr. Fairchild: Any particular purpose for the introduction of this?

By Mr. Ging: To show the attitude of this witness toward the defendant, Donald Joseph on April 11, 1945.

To the introduction in evidence of Defendants' Exhibit A, the State of Indiana, by counsel, interposed an objection for the reason that it has no purpose, as shown by the defense counsel, for it and for the reason it is immaterial and irrelevant.

By the Court: Objection sustained.

By Mr. Ging: That is all.

By Mr. Fairchild: That is all.

[fol. 215] JESSE MCCARTY called to the witness stand as a witness in behalf of the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief, such examination in Chief being conducted by John H. Dailey, Deputy Prosecuting Attorney, 19th Judicial Circuit, State of Indiana.

Q. Your name please?
A. Jesse McCarty.
Q. Where do you live?
A. Jeffersonville, Indiana now.
Q. What is your occupation now?
A. I haven't got any.
Q. Formerly what was it?
A. Police Officer.
Q. Where?
A. City of Indianapolis.
Q. How long?
A. 27 years.
Q. And at the end of 27 years, what happened?
A. I retired.
[fol. 216] Q. I believe your wife is living?
A. Yes sir.
Q. At Jeffersonville and in poor health?
A. Yes sir.
Q. You ask that you be heard a little ahead of time so you could get back?
A. I did.
Q. Now, in the year 1935, what were your duties or assignments at that time?
A. Assigned as Detective Sergeant on homicide.
Q. As Homicide Detective, did you have any connection with what involved the death of Officer Quinnette?
A. I did.
Q. What was your first connection with that case?
A. We were at 10th and Meridian.
Q. Who is we?
A. Lieutenant Pope and Tom Auls and we received a broadcast that Officer Quinnette and Chatham had been shot at 12th and Park, so we immediately went over there.
Q. What did you see when you arrived there?

A. When we arrived, we seen Quinnette standing out in the middle of the street bleeding and Chatham standing on the sidewalk, some man holding Quinnette there in the middle of the street and, of course, a lot of people gathered around at that time.

Q. Then, what did you do next?

A. Quinnette and Chatham both said that the man——

[fol. 217] By the Court: Strike out what was said.

A. We went upstairs.

Q. You went upstairs in what building, if any?

A. Hazel Dell Apartments, 12th and Park.

Q. You went upstairs to what apartment, if you know?

A. Apartment No. 5.

Q. What did you see up there?

A. We saw the door was opened and we went in looking for the people that done the shooting.

Q. Find anybody there?

A. No sir.

Q. Find anything?

A. Later on, yes sir.

Q. What did you find?

A. In our investigation, I went to a small bedroom there and opened a little dresser drawer and found a .38 blue revolver and a holster.

Q. See any other guns?

A. One besides that Colt.

Q. What gun was the other you saw?

A. Nickel plated .38 Smith and Weston revolver.

Q. Do you know whether either of those guns had belonged to Officer Quinnette?

A. No sir.

Q. You mean they had?

A. They didn't belong to him.

[fol. 218] Q. Had either of those guns belonged to Officer Chatham?

A. No sir, not what I saw.

Q. Now, these two guns, let's take the one that you found in the drawer, shoulder holster, as to whether or not it was loaded?

A. It was fully loaded.

Q. When you say fully loaded, what do you mean by that?

A. Every chamber had a cartridge in it.

Q. Now, as to the other gun that you saw there?

A. I saw that in Lieutenant Pope's hand. That was the Smith and Weston.

Q. As to whether or not it was loaded?

A. I didn't examine it.

Q. You know whether either of those guns, where they are today?

A. No, I do not.

Q. After seeing the guns, did you make any other investigation, see anything else there?

A. Yes, we looked around for other evidence, for fingerprints, we found fingerprints on the ice box door, that is, later on we called the man that found those.

Q. Other than fingerprints, did you see anything there?

A. Some clothing, canned goods and dishes.

Q. As to whether or not there were any holes in the walls?

A. Yes sir, we seen holes in the walls.

Q. What kind of holes?

A. Bullet holes.

[fol. 219] Q. How many did you see?

A. I counted two.

Q. With reference to the front door, the door out on the stairs that goes down to Park Avenue, could you tell the jury about where those holes were located?

A. Right behind the door that leads into the apartment. That is the right of the entrance I found a bullet hole in the wall and one in the floor.

Q. That is all you saw?

A. Yes sir.

Q. After that, what did you do?

A. Well, as I say, we still looked around for evidence and advised not to touch anything until the fingerprint man got there.

Q. After your investigation was concluded there, I'm assuming you told us all about that?

A. Yes sir.

Q. Then, what was your next connection with the case?

A. Well, after Fletcher and Chief Marcy ordered a search for the men that done the shooting, naturally we went around the hall there looking for evidence and witnesses.

Q. Then did that conclude your work that day in this case at the apartment?

A. Yes sir.

Q. Did you have occasion to see either of these two defendants after that?

A. Yes sir.

[fol. 220] Q. Where?

A. State House in Indianapolis.

Q. What part of the State House?

A. In State Police Headquarters.

Q. One or both of them?

A. Both of them.

Q. Those the two men sitting over there between the lawyers?

A. Yes sir.

Q. Do you know which one is which?

A. That is Pierce on this side and Joseph on that side.

Q. In other words Pierce is sitting next to Mr. Ging?

A. Yes sir.

Q. Joseph next to Mr. Free?

A. That is right.

Q. Who was with you there at the State House, went over there with you, if anyone?

A. Lieutenant Pope and Tom Auls.

Q. How long did you stay at the State House there?

A. Not very long.

Q. And when you left there, who left with you?

A. Myself and Lieutenant Pope and Tom Auls and Joseph and Pierce and a fellow by the name of Hedley.

Q. In other words, the State Police turned these men over to you?

A. Yes sir.

Q. Now, while you were there at the State House, did you have any conversation with either of these defendants?

[fol. 221] A. No sir.

Q. Was there any conversation that you overheard between any one with you and the defendants?

A. No sir.

Q. What was the physical condition of the defendants, if you observed it?

A. Looked all right to me.

Q. Observe whether either one of them was shot?

A. I couldn't say at that time, no.

Q. What did you do with the two defendants when you left the State House?

A. We brought them back over to Police Headquarters in Indianapolis.

Q. Where did you take them?

A. What we call the Detective Department.

Q. What floor?

A. On the first floor.

Q. That is on South Alabama?

A. Yes sir.

Q. And after they were there, did you question them?

A. I talked to Paul Pierce.

Q. And did he talk to you?

A. Yes sir.

Q. Can you remember the substance of your conversation with Paul Pierce?

A. Yes sir.

Q. That is Paul Pierce, am I correct, and not Joseph?

[fol. 222] A. That is right.

Q. Tell the jury what the substance of that conversation was.

(To which question and the answer sought to be elicited thereby, the defendant, Paul Pierce, by counsel, interposed an objection unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult with an attorney or advised that whatever he might say might be used against him and that he had a right not to make any statement at all and there is nothing here in this man's testimony as yet which shows that any conversation or statement Mr. Pierce might have made at that time was voluntary and in short, there has been no premise laid which would permit this witness at this time to testify to anything that Paul Pierce said about this occurrence and also that under no circumstances could the statement made by Paul Pierce, [fol. 223] any statement made by Paul Pierce to this officer, out of the presence of Donald Joseph, would be any evidence in this case as against Donald Joseph.)

(And here, the jury was dismissed and the following hearing was had before the Court outside of the presence of the jury.)

JESSE MCCARTY, recalled to the witness stand and having heretofore been sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief, such examination in chief being conducted by Waldo C. Ging, one of the attorneys for the defendants.

Q. You say you had this supposed conversation you said you had with Paul Pierce was had in the Detective Division of the Police Headquarters?

A. Yes sir.

Q. What day was that?

A. On the 10th day of December, 1935.

Q. That was how many days after the shooting occurred?

A. Two days.

Q. You knew at that time that Paul Pierce had been shot [fol. 224] himself, didn't you?

A. Not before that day, no sir.

Q. I say you found it out at that time?

A. That day, yes.

Q. Had Paul Pierce had the, was an attorney present representing him at that time?

A. No sir.

Q. Had he been permitted to communicate with any attorney or with any friend or relative at that time?

A. Not to my knowledge.

Q. Had he been taken before a magistrate in Marion County or any other county that you know of to have him advised as to his constitutional rights?

A. Not that I know of.

Q. Before you talked to him, did you advise him as to his constitutional rights?

A. Yes.

Q. What did you say to him?

A. I told him he could make a statement if he wanted to and he didn't have to if he didn't want to.

Q. You didn't tell him that he was entitled to an attorney?

A. No.

Q. Do you know whether any of his family was there at that time?

A. No sir, I do not.

Q. He had been, so far as you know, in the custody of officers since his arrest the night before, is that right?

A. —

[fol. 225] Q. How many officers you say were present besides yourself?

A. Two.

Q. Two other officers?

A. Yes sir.

Q. There was no one there representing Paul Pierce or appearing in his behalf at all, was there?

A. Not to my knowledge there wasn't.

Q. He was alone and three of you officers, is that right? Where was this at?

A. Two officers, myself and John Giles and Paul Pierce.

Q. Oh, just two officers, I thought you said two besides yourself.

A. I thought you meant over at the State House.

Q. There was John Giles and yourself and Paul Pierce?

A. Yes sir.

Q. He was under arrest at that time, wasn't he?

A. Yes sir.

Q. In your custody as a member of the Indianapolis Police Department?

A. That is right.

Q. And as soon as you got to Police Headquarters, you took him into the questioning room and started questioning him, is that right?

A. Yes sir.

Q. And before he had any, was advised by any magistrate of his constitutional rights, although he has been arrested [fol. 226] some many many hours before that, had he not?

A. Yes sir.

Q. Do you know whether he was in pain, suffering pain at that time?

A. No sir, he didn't act like it.

Q. Well, he had a pretty serious wound, didn't he at that time?

A. I couldn't tell.

Q. Did he complain of being in pain?

A. No sir.

Q. Couldn't you tell from his actions that he was in pain at that time?

A. No I couldn't.

Q. You weren't interested in that part of it then, were you?

A. I wasn't no physician, I wasn't in shape to tell.

Q. There wasn't any physician in attendance?

A. Not at that time, no, he had seen one before we got over there, he had medical over at the State House before we got him.

Q. Did you see him receive medical aid at the State House?

A. No sir.

Q. You don't know of your own knowledge?

A. No, only what I was told.

Q. That is not of your own knowledge, you don't know anything about that?

A. No sir.

[fol. 227] Q. You didn't see him receive any medical aid?

A. No sir.

Q. Of your own knowledge, you don't know that he did have any?

A. That is right.

(Thereupon, the defendants, by counsel, renewed their objections stated previously and object for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention he had received no instructions from any magistrate as to his constitutional rights, he had no representation, either family representation or attorney representing him at that time to advise with him as to what he should do with regard to this questioning by this officer and his associates and that the confession was not, or that the statement —withdraw confession—that any statement made by Mr. Pierce in the presence of this officer or his associate, under the circumstances would be a violation of this defendant's [fol. 228] constitutional rights.)

By Mr. Ging: That is all.

(The said witness testified further in the hearing outside the presence of the jury on cross-examination in response to questions propounded by John Dailey, Deputy Prosecuting Attorney of the 19th Judicial Circuit, State of Indiana.)

Q. Mr. Witness, did the defendant at any time request a lawyer?

A. No sir.

By Mr. Dailey: That is all.

(The defendants, by counsel, objected further that any statements, if the court permits it to go in, any statements made by Mr. Pierce, not relating to or connected in any way with the offense charged is not admissable in this case under the authority of the Brown case or must show common intent or design or connection with the case.)

[fol. 229] By the Court: If you get into other cases, it wouldn't be admissable at all.

(And further this witness saith not in the hearing outside the presence of the jury.)

(And now, the jury is returned into open court and the trial of this cause is resumed before the jury.)

Jesse McCarty returned to the witness stand and testifies further as follows on examination in chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State.

By the Court: Objection overruled as to the defendant, Paul Pierce and the witness will be permitted to answer the question on the issue between the State of Indiana against Paul Pierce but the objection of Donald Joseph is sustained and any evidence given or answer in response to this question is not admitted in evidence on the issue of [fol. 230] the State of Indiana vs. Donald Joseph and shall not be considered by the jury in any way in regard to the case alleged against Donald Joseph and the jury will not consider it against Donald Joseph.

Q. Officer, there may have been other conversations with the defendant Pierce, I want you to confine it purely to the episode involving Officer Quinnette. Now, will you answer the question?

A. Well, we asked him about the shooting scrape in the Hazel Dell Apartments at 12th and Park and he told me, on the 29th day of November 1935 that Donald Joseph and a girl by the name of Grace Nowling who was Joseph's girl, went there and rented an apartment and that they had——

(Thereupon, the defendants, by counsel, separately and severally interposed an objection to the answer for the reason it isn't an answer to the question, he is taking in a lot more time. This conversation he is talking about occurred on the 29th day of November instead of the 7th of December.)

Q. Was this conversation when you first took him to head-[fol. 231] quarters?

A. Yes sir, on December 10.

Q. December 10, that would have been three days following the date Officer Quinnette was shot?

A. That is right.

By the Court: Objection overruled, go ahead, whatever he said in regard to this occurrence.

A. They rented this apartment and paid $42.50 in advance.

Q. Under what name, did he tell you?

A. I think it was D. C. Coleman, I'm not sure about the two first initials. It was Coleman. He made an agreement to meet them at the Real Silk Hosiery Mills where Grace Nowling worked. When he left Joseph and Grace and drove up in a taxicab, she got out and went in the mills and him and Joseph went downtown, drove to the Indiana Theatre and dismissed the cab and went up to the front of the theatre and looked at the pictures, didn't like them and decided to go to the Lyric Theatre.

Q. Is this what happened on December 7?

A. It is what he said on December 10. They went to the Lyric Theatre and seen the show, they went over to this apartment and stayed a while and left, went to some girl's house, he wouldn't tell me who the girl was and stayed

around. Later on he said that they, December 6, the evening, they left Indianapolis and drove to Cave City, Kentucky, with another girl and wouldn't tell me who that girl was. [fol. 232] They got back to Indianapolis about 9 o'clock that night and went back to this girl's house and stayed all night. "On the morning of December 7, they went downtown again and got some groceries and some cleaning, went back to this apartment and he says, about 1:30 or 2 o'clock a knock came on the door and he said after he got in the apartment and they had the door locked, he went to the door and opened it, three men were standing in the door, one of these men said, I'm from Detective Headquarters, I want to talk to Mr. D. C. Coleman. Pierce told me both of them spoke up and says, I'm Mr. Coleman, come in. About that time he said he had a .38 caliber nickel plated revolver in his right hand, pulled that gun out of his pocket, put it on these two men and told them to stick it up. And he said Quinnette pulled his gun out, said they started shooting, I don't know which one shot first and he said that him and Quinnette was shooting at each other and he seen Quinnette fall to the floor and Donald Joseph and Chatham was wrestling or fighting and they fell on the davenport there and after he emptied his gun at Quinnette, he run into a little bedroom and got a brief case and got another gun out and throwed the brief case on the floor of the living room. About that time Joseph and Chatham was out in the hall, he said I shot again, I think that is when I hit Chatham." He told Donald Joseph to grab that brief case off the floor and they both left out the [fol. 233] back way and run east on 12th Street to an alley, first alley east of Park Avenue and North to 13th Street. When they got to 13th Street they seen a car coming, they both run out in the middle of the street, a colored man in the car, he put his gun on this man and he stopped, he opened the door on the right hand side of the car and Joseph went around and got on the left hand side of the car, which is the driver's side and they made this colored man get out, they got in the car and drove out Collage, east to Irvington and south to Road 29 and through Shelbyville and went into a little town called Goudy, Indiana, the home of Sylvia Hedley. And he said when we got there, there wasn't nobody there but Miss Hedley. Pierce told me they told Miss Hedley they had been accidentally shot. In this car that they took away

from the colored man was a kit and some bird seed. They took the kit and the bird seed into the house.

Q. What kind of kit?

A. Doctor's kit, they got some bandages out of the kit and lysol and bandaged each other's wounds. That is the first time I knowed they was shot. They stayed around there until Hedley came home about 7 o'clock that night. They decided they had better get rid of that car. They got Hedley's Chevrolet and took the car out of the barn lot and drove it to near St. Omer, Indiana and they left it on a side road, went back to Hedley's home and stayed there that night and the next morning, Sunday morning, Hedley got [fol. 234] up out of bed, his wife and he went to Shelbyville to get a paper and Pierce told Hedley to bring him an Indianapolis Star, which he did. He says he saw in the Star about the shooting and then about 3 o'clock the next morning, Monday morning was when the State Police come and got them and brought them back to Indianapolis.

Q. Now, after you took that statement, did you reduce it to writing?

A. I did sir.

Q. And after it was reduced to writing, what, if anything, did you do with it with reference to Pierce?

A. I read it to him.

Q. You read it to him?

A. Yes sir.

Q. Show it to him?

A. Yes sir.

Q. As to whether or not he signed it?

A. He did.

Q. In your presence?

A. Yes sir.

Q. I hand you now what has been marked State's Exhibits 6, 6A, 6B, 6C, 6D and 6E and state whether or not that is the statement you took from Pierce?

A. Yes sir, it is.

Q. Directing your attention to the last page which is marked State's Exhibit 6E, a signature appearing on the [fol. 235] lower right hand corner, you know whose signature that is?

A. I do.

Q. Whose?
A. Paul Pierce.
Q. There is signatures to the left side of that page in the lower part, you know whose those are?
A. I do. One is mine and one John Giles.
Q. Who is John Giles?
A. He at that time was Detective Sergeant.
Q. Is he still alive?
A. Yes sir.
Q. Is he here in Court?
A. He is, yes, he is here.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

(And here, the State of Indiana, by counsel, offered to introduce and read in evidence the document above referred to which is marked for the purpose of identification as State's Exhibits 6, 6A, 6B, 6C, 6D and 6E except beginning on the last line of Page 6D with the words "I further" and the exception including lines 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 on Page 6E ending with the figures "1935".)

(To which offer, the defendants by counsel, separately and [fol. 236] severally interposed an objection unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult with an attorney or advised that whatever he might say might be used against him and that he had a right not to make any statement at all and there is nothing here in this man's testimony as yet which shows that any conversation or statement Mr. Pierce might have made at that time was voluntary and in short, there has been no premise laid which would permit this statement to go in evidence and for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention, he had received no instructions from any magistrate as to his constitutional rights, he had no representation, either family representation or attorney representing him at that time to advise with him as to what [fol. 237] he should do with regard to this statement by Pierce and that any statement made by Mr. Pierce in the presence of this officer or his associate, under the circumstances would be a violation of this defendant's constitu-

tional rights. The defendant, Donald Joseph, objects further for the reason it is not shown by the testimony of this witness or by the exhibit itself that the defendant, Donald Joseph, was present at the time the exhibit was taken and subscribed as indicated by this officer in his testimony.)

By the Court: Objection overruled as to the defendant, Paul Pierce and sustained as to the defendant, Donald Joseph and the jury will not consider this exhibit and the contents thereof in any way as against Donald Joseph.

(Thereupon, the defendants, by counsel, separately and severally objected further because it is shown by the testi-[fol. 238] mony of this witness that at that time, the defendant, Paul Pierce, was wounded, was in physical pain and that under all circumstances, the exhibit was obtained while the defendant, while Paul Pierce was under duress, coercion and undue influence, threats and intimidation on the part of the police officers conducting the investigation.)

By the Court: This further objection of Paul Pierce is overruled.

Q. Directing your attention to the upper right hand corner of Exhibit 6 through D appear the initials P.A.P. you know what those are?

A. Paul A. Pierce.

Q. Did you see those affixed there?

A. Yes sir.

Q. To each one of these pages?

A. Yes sir.

By Mr. Ging: If the Court please, I ask that the court permit us to introduce the evidence of Paul Pierce upon the question and upon this exhibit, before it is, if it is finally [fol. 239] introduced. We want to make our showing and have Mr. Pierce testify as to the circumstances surrounding the taking of this statement.

By the Court: Request granted.

(And here, at the hour of 4:00 p.m. Friday, January 29, 1954, Court adjourned.)

(And now, at 9:00 a.m. Monday, February 1, 1954, Court convened and the trial of this cause was resumed.)

(The jury is now sent to the jury room and a hearing is had outside the presence of the jury, before the Court, as follows:)

Paul Pierce called to the witness stand and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief in the hearing outside [fol. 240] the presence of the jury, such examination in chief being conducted by Waldo C. Ging one of the attorneys for the defendants.

Q. State your name to the Court.
A. Paul Pierce.
Q. You are one of the defendants in this case?
A. I am.
Q. Were you involved in an altercation with police officers named Chatham and Quinnette?
A. I was.
Q. On Delaware Street in Indianapolis, Indiana on the 7th of December, 1935?
A. Yes sir.
Q. On Park Avenue, I mean?
A. Park Avenue and 12th Street.
Q. Well it is the altercation involved in this case?
A. Yes sir.
Q. Were you wounded in that encounter?
A. Yes sir.
Q. By what method, how were you injured?
A. I was shot with a gun by Detective Quinnette.
Q. Where?
A. In the chest.
Q. Which chest?
A. In the left chest.
Q. The bullet went into the front of your body then?
[fol. 241] A. Yes.
Q. Did it go through your body?
A. Yes. It went in the chest and came out the back.

Q. That was the only gun shot wound you received in that encounter?

A. Yes sir.

Q. Now, after that time, after the altercation was over, you fled?

A. Yes.

Q. Then later on when was it you were arrested?

A. This happened shortly after noon on December 7 and we were arrested about 1:30 I believe, A.M. of the 10th.

Q. December '35?

A. December 10, 1935.

Q. Now, at the time, from the time you were shot until you were arrested, had you had any professional medical attention from any Doctor?

A. None at all, no.

Q. What about your loss of blood?

A. Well, when I started to get out of the car when we arrived at the Hedley home, I was in a pretty weakened condition. I know the seat was full of blood and my topcoat was bloody and suit coat was bloody, trousers and shoe, blood had run down my leg into my shoe. I had lost considerable amount of blood.

Q. Had there been any effort made during the period of that flight to stem the flow of blood?

[fol. 242] A. No, we hadn't even stopped.

Q. Now after you were arrested you were taken to Indianapolis I believe?

A. Yes to the State House.

Q. And how long were you in the State House?

A. Well, from about 2:30 in the morning until about, I imagine, 8, 9 o'clock in the next morning.

Q. The same morning?

A. The same morning, yes.

Q. Where were you?

A. State Police Headquarters in the basement.

Q. Did you receive any medical treatment there?

A. No sir.

Q. Now, when you left the Stat House, were you taken from the State House to some place else?

A. Yes, we were taken to the Indianapolis City Police Station.

Q. And at the time you started down the steps of the State House, were you in company of police officers?

A. Yes sir.

Q. Who?

A. Well, I don't remember all of them, it seems to me there might have been 6 or 8. Three of them that I remember were Detectives Pope, McCarty and Gish also Detective Auls. Four that I remember and I think 2 or 3 more.

Q. When were you taken down the steps of the State House did anyone say anything?

[fol. 243] A. Yes, sir.

Q. Who?

A. Detective Pope.

Q. What did he say?

A. He said something about why don't you run now, you son of a bitch.

Q. You were taken then, later on, from that point to the police station?

A. Yes we were.

Q. Where were you taken in there?

A. We were taken into a small interrogation room in the City Police Headquarters.

Q. How many police officers were in there at that time, if you remember?

A. At the time we were taken in there?

Q. Yes.

A. I couldn't say exactly, there were quite a few of them coming in and out.

Q. Were you both in the room together?

A. No, we were separated when we reached headquarters.

Q. You were alone at that time, I mean except for the police officers?

A. Yes sir.

Q. What happened when you got to this room, this little room you told us about?

A. Well——

Q. Now, Mr. Pierce, as I understand it, wasn't in there, or [fol. 244] Mr. Joseph, I mean?

A. No.

Q. You were separated, when you say we, you mean yourself?

A. I meant myself and the police officers.

Q. As I understand you, Mr. Joseph had no part and was not present with you that day at all, is that right?

A. That is true, yes. We went into this small room, I imagine 5 feet wide and maybe 15 or 20 feet long, very small room, these police officers questioned me and asked me to make a statement and I was willing to make a statement but I wasn't willing to make the kind of statement that they wanted me to make.

Q. Now, at that time, from the time you were shot until that time, had you received any medical attention?

A. No, none at all.

Q. Do you know what your physical condition was with regard to fever or weakness or anything of that sort?

A. I was pretty weak, I hadn't eat anything. I had no desire to eat.

Q. Hadn't eaten anything from when?

A. The last meal I ate up until about 3 or 4 days after I was arrested was Saturday dinner. I had no appetite at all, I didn't feel like eating. I was weak, lost a lot of blood. I must have been having chills because I was cold all the time. I couldn't seem to get warm and I was very thirsty, I couldn't seem to get enough water to satisfy my thirst. While I was in the State Police Headquarters, I must of [fol. 245] drunk 10, 12 glasses of water, I was thirsty all the time.

Q. Then when you got to the police headquarters, what was your condition?

A. I was feeling pretty badly, hadn't had any sleep to amount to anything in the three nights previous to that time.

Q. Were you in pain at that time?

A. Yes I was in pain for a long time after that.

Q. Suffering from this gun shot wound?

A. Yes sir, I was. This wound, as I understand, as I was later told by the doctors, my left arm was almost completely paralyzed at that time, I could barely move my fingers and the doctors told me had injured the nerve center where it came out in the back, nerve center that controlled my left arm and it was giving me a lot of pain.

Q. You hadn't had any bath, or had you at that time?

A. No sir.

Q. Did you have on the same clothes?

A. Well, the police took my suit coat and overcoat away from me and Don gave me his overcoat and I believe I had one of Hedley's shirts on. I didn't have a suit coat. The only coat I had on was Don's, he had given me that because I was cold.

Q. Now, during the time, this particular day, now, as I understand you, from about 8 or 9 o'clock on the 10th in [fol. 246] the morning on the 10th of December, 1935, that is when this questioning began?

A. Yes sir.

Q. Had you at that time or any time during that day, ever been taken before any magistrate?

A. No I hadn't.

Q. Any legal officer of any kind, I mean a Court Officer, judicial officer?

A. No.

Q. Were you at any time during that day, did you advise with any attorney?

A. No sir, I didn't.

Q. Or with any of your relatives or friends?

A. Our relatives weren't permitted to see us for approximately two weeks, Mr. Ging.

Q. That questioning, as I understand you, on that particular day, was conducted by a group of police officers, various officers?

A. That is right.

Q. Now, do you remember anything about, were you given anything to eat that day, do you remember?

A. No. No I wasn't, I don't know whether I was offered anything or not. If I was, I wouldn't have wanted it anyway.

Q. What about water?

A. I asked for water several times and I got it once in about that day that I remember and that was by an Officer [fol. 247] that I knew that walked in there, he gave me a paper cup of water.

Q. Just one paper cup of water?

A. Yes sir.

Q. Was he one of the officers who was conducting the questioning?

A. No he wasn't, he was a uniformed police officer.

Q. These men who questioned you, were they uniformed police officers?

A. No, they were detectives.

Q. Now then, during all that day, you say you had water once?

A. One time, yes sir.

Q. The questioning started when and ended when?

A. Well, as soon as we were taken from the State House, I think around 8 o'clock in the morning, 8 or 8:30 and continued throughout the entire day until, I imagine around 4, 5 o'clock in the evening. I don't know exactly what time it was.

Q. Were you questioned any that evening?

A. Later on in the night, sometime in the night, I don't know what time it was. 2 or 3 times groups of officers came up to the cell and talked to me. It wasn't formal questioning, they simply came up and talked to us a little bit, it wasn't in the form of questioning.

Q. During that day, at any time, did you receive any medical attention at all?

A. No I didn't.

[fol. 248] Q. Did you, or did you not sign a written statement?

A. No, not during the first day.

Q. Now you say the questioning closed about 5 or 6 o'clock in the evening?

A. Sometime in the evening, 4 or 5 o'clock, I don't know just what time it was.

Q. Then where were you taken after you left the questioning room?

A. Well, I was taken to a, it wasn't the part of the jail they usually take prisoners in, isolation section, I imagine, I was placed in a cell there.

Q. By yourself ?

A. Yes sir.

Q. What was the size of the cell and the condition of it?

A. Well, it was maybe 6 feet wide and maybe 8, 9, 10 feet long, I don't know the exact size.

Q. Were there any beds or chairs or anything in it?

A. There was no bed in this cell I was in, no chairs and no bed.

Q. Any furniture of any kind?

A. Nothing but just the bare room, just the cell.

Q. Was it a board cell or stone room?

A. I believe it was a steel cell on the three walls and the front was all bars.

Q. Were there any outside ventilation, any windows or anything?

A. There were several windows along the side of the wall.

[fol. 249] Q. Now, the weather was cold at that time, was it?

A. Yes, it was pretty cold.

Q. Were you able, or did you sleep that night?

A. No, I couldn't sleep, it was too cold to sleep, the floor was cold.

Q. Were you given any bedclothing of any kind?

A. No, they never give you any bedcloths in jail there.

Q. They didn't give you any?

A. No sir.

Q. I believe you said you were in there alone?

A. I was alone, yes sir.

Q. During that night, were you permitted to communicate with anybody?

A. No I wasn't.

Q. Did you ask during that day's questioning on the 10th of December or during the night for any of these other officers who may have interrogated you for permission to talk to an attorney?

A. Yes, I asked Mr. Pope to call an attorney, I had the card of an attorney in Indianapolis, Ernest Owens, in my pocket. I gave it to him and asked if he would call this attorney for me.

Q. When did you do that?

A. Shortly after we got to the police station.

Q. On the first day?

A. On the first day, a very little while after we got there.

Q. And when you gave Mr. Pope this card of Ernest [fol. 250] Owens, what, if anything, did he say or do?

A. Well, he took the card and threw it on the floor and told me I didn't need an attorney.

Q. Did you say anything to that?

A. No, I didn't argue with him about it.

Q. Now, as I understand you, and tell the court what is the fact as to whether or not you did sleep any that night?

A. No, no, I didn't sleep a wink that night. I sat on the floor that night. I couldn't walk too much, I was too weak.

Q. Concrete or steel floor?

A. I am not certain.

Q. Carpet or anything at all to make it more comfortable?

A. No.

Q. No chair in the room?

A. No chair, no.

Q. You remember whether you were given any water that night?

A. I got a drink of water as I went into the cell, there was a drinking fountain out in the corridor. As I went by I got a drink of water.

Q. Were you given any food that night that you know of?

A. I don't recall getting any. I don't remember for sure whether I did or not but I don't remember. I wouldn't say positive whether I was offered any or not. I know I didn't eat anything. I wouldn't say I wasn't offered any because I don't remember.

Q. Did you have any idea as to the temperature of that [fol. 251] room that night?

A. No, no I don't. I know it was very cold at least, I was very cold, though I had been very cold ever since I was shot, I simply couldn't get warm. When I was at the Hedley home I was lying in bed with 5 or 6 blankets on top of me and still couldn't get warm.

Q. Now, during that night, I don't know whether you have testified, did you receive any medical attention?

A. No, none at all.

Q. During that night were you suffering any pain?

A. Yes.

Q. Were you chilling, you say and cold?

A. Yes, I was having chills all the time.

Q. Did you at any time, during the first day or night, ask for medical or hospitalization?

A. Yes, several times I asked for a doctor or asked to go to the hospital. I really thought I should be placed in the hospital. I asked Mr. Pope about seeing about getting me in the hospital.

Q. What did he say about that?

A. He talked at first like he was going to do something about it.

Q. What did he say, do you remember?

A. I couldn't tell the exact words. I got the impression at first that he was going to get me placed in the hospital. I soon saw that he wasn't going to do anything. He didn't do anything and wouldn't do anything.

[fol. 252] Q. Were you fearful that you might be fatally injured at that time?

A. I knew I was in pretty bad condition, I was pretty worried about myself at that time. I didn't know much about gunshot wounds but I knew I was in a lot of pain.

Q. Were you still weak at that time?

A. Oh yes sir.

Q. Nervous?

A. Yes, very much so.

Q. Did you know at that time, or do you know now, did you have fever, could you tell from your own feelings that you had fever?

A. I thought I had a fever but I didn't know anything about it. I hadn't had my temperature taken at that time.

Q. But you were hot and cold?

A. Yes, hot one minute and cold the next.

Q. Now, what about your condition during that night, other than what you have testified, as you entered the cell were you given any food or drink at all during that night?

A. No.

Q. About what time was it when you were placed in the cell?

A. Well, my guess, about as near as I can guess, around 5 o'clock, a little bit one way or the other, I don't know.

Q. During that night, you were confined there, were you taken out of the cell during the period of the night when the officers came up to question you?

[fol. 253] A. No, they stood out in front of my cell and talked to me.

Q. They didn't go into your cell?

A. No, they didn't enter the cell.

Q. How many times were you interrogated that night, do you remember?

A. I believe about three times, it seems to me there were

about three separate groups of police officers that came up there.

Q. Now, all these things you have testified about, I mean about the questioning at police headquarters, that was on December 10, 1935?

A. That is right.

Q. Now, the next day, December 11, were you interrogated again?

A. Yes sir.

Q. Where were you taken, if you were taken any place?

A. Well, either in the same room or one just like it, I don't know the same one.

Q. You mean the same one you were questioned in before?

A. Yes sir.

Q. You weren't questioned in the cell?

A. No.

Q. Was that cell cold and unfurnished all during the night, all during the time you were in there?

A. It was.

Q. You remember about what time the questioning started on the 11th?

[fol. 254] A. I didn't see a clock that I recall at any time. I don't know what time it was.

Q. Did you have a watch?

A. I had one but the police had taken it.

Q. Had you had any change of clothing or permitted to take any bath or anything of that sort?

A. No.

Q. Now, when questioning started the next day, can you tell what happened, taken from the cell into this questioning room, who questioned you, if anybody?

(To which question and the answer sought to be elicited thereby, the State of Indiana, by counsel, interposed an objection for the reason that the State has offered a statement taken from this defendant dated December 10. Anything that goes on into the 11th or 12th, I don't know how far we are going would be a bit remote from the time of the taking of the statement and the State objects to this pattern as not being material to any issue before the court.)

By Mr. Ging: If the court please, there will be a very seri-
[fol. 255] ous question as to when this statement was taken.

If they contend this statement was taken on the 10th. It is our contention it was not taken until the next day and an examination of the statement itself will disclose that the date of the statement was changed, had been changed. I don't know what actual date but all you need to do and we will offer that in a little bit to show that there may be a question as to when the statement was actually made and an examination of the statement will show that.

By the Court: Objection overruled.

Q. Now, Mr. Pierce, what you are testifying to now will be on December 11, 1935, is that right?

A. That is right.

Q. Now, what officers, if you remember, interrogated you the next day, I mean on the 11th, confine your statements to the 11th.

A. Well, I talked to Mr. Pope and Mr. McCarty and John Giles.

Q. Was he a police officer too?

[fol. 256] A. Yes he was a detective.

Q. He didn't question you the day before?

A. He was with the police at the State House and I talked to him a little bit the previous day.

Q. Did anything happen that day, that was in the interrogation room?

A. Well, every time that they asked me about the shooting affair, I told them that I did not know these men were police officers until I read it in the Indianapolis Sunday Star on Sunday morning following the shooting. They insisted that I knew they were police officers, that these officers had displayed officers badges and told me they were police officers. I tried to tell that I did not know it at the time. They wouldn't have it that way. They insisted that I had known they were police officers and we argued around about it quite a lot.

Q. Well, did Police Officer Gish do anything to you at that time?

A. Yes, Detective Gish, we were sitting in this room and he asked me, said, why don't you tell the truth about this, something like that. I told him that I had been telling the truth and he told me that if he had, said if I had been in that apartment, you wouldn't be here today. Well, anyway, in

the course of this discussion, he thought I was being sarcastic, I have forgotten what I said to him, I didn't mean it to be sarcastic, I answered something to a question, I have [fol. 257] forgotten just what it was now, he got mad about it and got up and hit me in the jaw and knocked me down.

Q. With his fist?

A. Yes, hit me and kind of bloodied the left side of my mouth and knocked me down on the floor and——

Q. Did he say anything when he hit you?

A. I don't remember if he said anything or not. I remember one thing one of the other officers said there. I believe this fellow was in uniform, he said, don't mark him up, but I got up and sat down again. About the time I sat down, he grabbed me around the head and threw me on the floor.

Q. Gish did?

A. Yes sir. Kicked me in the stomach the first thing, I turned over a little bit and he kicked me in the ribs then about a half dozen times and while this was going on, the Chief of Detectives, Simon, came in the door.

Q. Fred Simon?

A. I believe that was his name. He was Chief of Detectives at that time and he said here, here, none of that and so Gish stopped there and I got back up in the chair. I lay there a minute and I got back up in the chair and Detective Gish said, he started out like he was going to pull his gun out, I ought to blow your God Damn head off. About that time the Chief of Detectives stuck his head in the door again. He called Mr. Gish out in the hallway and he didn't come back for a while. I don't know, called him out there and talked [fol. 258] to him, I suppose.

Q. Now, when did that occur with reference to, this altercation with Gish, when did that occur with reference to the time the questioning started on the morning of the 11th?

A. Just a little while before.

Q. After the questioning started, you mean?

A. Oh no, I thought you said before signing the statement. Just a little while before I signed the statement. Sometime in the afternoon, if I remember rightly.

By Mr. Dailey: Are we in the 11th now?

By Mr. Ging: Yes sir, everything he is testifying to is the 11th.

Q. Now, during that day, were you given any medical attention?

A. Not until after I signed the statement.

Q. Before any statement was signed?

A. No, none at all.

Q. During that day, did you ask these officers for medical attention?

A. Yes, I asked several times until I just saw it wouldn't do any good and I kept quiet about it.

Q. During all that time, on the 11th now, can you describe to the court your physical condition?

A. Well, I was feeling pretty bad, I had lost a lot of [fol. 259] blood, I was in a heck of a lot of pain, not only that day but many days afterwards.

Q. Were you weak?

A. Yes, I was weak, I was feeling pretty bad, was having chills all the time, couldn't get warm.

Q. What about your physical suffering, I mean from the wound itself?

A. Well, where it had torn these nerves out of the arm, that was giving me a lot of trouble and still is for that matter.

Q. How long, on the 11th, did this questioning continue, do you remember, Mr. Pierce?

A. Well, up until sometime in the early afternoon, I'd say around 2 or 2:30 in the afternoon.

Q. Now, do you remember whether you were given any water or food or drink from the time you were in the, placed in the interrogation room on that day until this 2:30 or whatever time it was?

A. Well, I don't remember getting any but I don't remember whether I was or not on that second day but I remember the reason, I recall more clearly when we first went in there, we had several arguments about the water and I didn't get any but on the second day, I don't know whether I was given any or not, I don't know what happened in regards to the water the second day, I don't recall.

Q. Now, was there anything said, anything else said by you or by any of these officers that you now remember [fol. 260] before you signed any paper?

A. Yes, Detective Pope came in there and——

Q. That is Roy Pope?

A. Yes sir. And he told me, he said, Paul, you are not denying that you shot this man, are you? I said no. I have never denied that I shot him. Said, well now, you know that you are going to be convicted, you're going to get one to 10 years anyway and said you might as well sign this statement and if you will sign this statement, we will go ahead and take you out to the hospital and get you some treatment.

Q. Go ahead, if there was some further conversation.

A. Well, also I asked him about Mr. Quinnette's condition and he said that Mr. Quinnette was seriously injured but that none of his vital organs had been injured and that the guy, he was getting all right, probably be out of the hospital in a week or so. Said, we have got a charge of assault and battery with intent to kill against you, you know you are going to be convicted, you might as well plead guilty. Well, I thought about it and he told me that they would take me out to the hospital if I signed the statement.

Q. At that time was there a statement written, had there been a statement written?

A. I believe the statement had been written before that time.

Q. Did you write it?

[fol. 261] A. No, I didnt write it.

Q. You signed it at that time?

A. I signed it a little while after talking to Mr. Pope.

Q. Was any part of it in your handwriting?

A. Only the signature.

Q. You know who did write it, did you see it written?

A. I thought Mr. Pope had written it, apparently I was mistaken about that. I thought he had written it.

Q. Well, you don't know who actually wrote it?

A. Actually, I don't know who wrote it.

Q. Was it written in your presence? The statement was actually written, I mean the corpus of the statement was it written in your presence, or do you remember?

A. Well, it seems to me that it was not written in my presence but I'm not positive. I know, during these conversations that I had with these various police officers they were doing some writing. I believe the statement that I signed was actually written outside of this room where I was being questioned.

Q. Can you tell the court now, how many times you asked to be taken to the hospital before the statement was signed?

A. No, I don't know, I asked several times, especially on the first morning and I know when they came to the cell and got me on the second morning that I was asking again and I asked to see a doctor 2 or 3 times during the day but I don't know how many times, several times. I saw it wasn't going to do any good so I just quit.

[fol. 262] Q. Well, is it a fact that at all times then before you signed Plaintiff's Exhibit 6 and 6A, whatever it is, you had no medical attention up to that time?

A. That is true.

Q. And during the 11th of December, 1935, did you make any further attempt to secure a lawyer, to advise with a lawyer?

A. No, I don't think so. I don't think that after I asked Mr. Pope that first morning to call Mr. Owens for me, I don't believe I said anything more about a lawyer.

Q. You weren't advised, didn't see a lawyer and weren't advised by a lawyer during the 10th?

A. No.

Q. And before the statement was signed?

A. I didn't get to see a lawyer until the morning that Mr. Quinnette died on the 18th.

Q. 18th of December, 1935?

A. Yes.

Q. On the 11th then, and prior to the time you signed the statement, had you seen or been advised by any of your friends or relatives?

A. No, my mother and father and brother and some other people had come up and tried to see me but the police officers wouldn't allow them to see me.

Q. From the time you were arrested or from the time you were taken to police headquarters, throughout the 10th and 11th, up until the time you signed State's Exhibit 6, and [fol. 263] 6A, B, C, D, and E, had you seen or talked to or been advised or been visited by anybody except these police officers you have been talking about?

A. No, not at all.

Q. Had you been any place other than the Indianapolis Headquarters of the Indianapolis Police Department?

A. I had been to the State House.

Q. I mean, you left the State House, you weren't taken out of the building then until after the statement was signed, is that right?

A. That is true.

Q. Now, at the time the statement was made, Detective, or whatever his title was, Quinnette, you were advised was not seriously, not fatally injured?

A. I had read that in the paper and that is what Mr. Pope and some more of the police officers told me at that time.

Q. As a matter of fact, he didn't die for several days later?

A. Several days later, yes sir.

Q. Now, can you think of any other conversation that was had prior to the time you signed the statement that you haven't already related to the court?

A. No, I can't think of anything that we haven't gone into.

Q. Now, along about 2:30, you say in the afternoon, you did then about 2:30 in the afternoon, on the 11th of December, 1935, state whether or not you did sign State's Exhibit [fol. 264] 6E and whether or not that is your signature?

A. I think it is my signature, yes. I signed this all right.

Q. You do know that it was not signed the 10th of December?

A. I'm sure it was signed on the 11th and not the 10th.

Q. Immediately after it was signed, then what happened?

A. We were taken to the City Hospital right away, in very few minutes after we signed the statement.

Q. Did you both go?

A. Yes sir, we both went.

Q. Both went in the police car?

A. In two cars.

Q. Went to the hospital, you say?

A. Yes sir.

Q. And what happened at the City Hospital, do you remember?

A. As I recall, the first thing that happened, we were taken in the X-ray room and had our wounds X-rayed, I was given a hypodermic, I think it was for lock jaw. Then I was taken into the operating room and the Doctor ran a probe through my wound there, I think he got something out of it, some cloth or something and there was some puss in the wound, he squeezed in the front portion of the wound

in the chest, he squeezed the chest walls and some puss came out and he put something, some sort of anesthetic or something in the wound.

Q. Who was present at that time beside- you and the doctor?

A. Some of these police officers, Detective Pope, and [fol. 265] McCarty, Gish, Auls, I don't know whether all in this room I was in. I think Don was in a different room.

Q. Pope was there?

A. Yes, Detective Pope was in there. I'm not sure who else was in there. I know several police officers in there.

Q. Were you in the operating room at the hospital?

A. Yes, I was on the operating table when the doctor was working on us.

Q. You know his name?

A. No, I don't know him.

Q. Now that was, as I understand you, was on the afternoon of the 11th of December, 1935?

A. Yes sir, that is right.

Q. Now, while you were lying on the operating table, was there any conversation between this doctor and Mr. Pope?

A. Yes, the doctor said, this one's got a fever.

Q. Who did he mean now?

A. Talking about me. He said, this one's got a fever and said this wound is infected and he should be placed in the hospital and Mr. Pope said something about, oh, we will take care of him and then a nurse came along that had a pad in her hand, I think admitting nurse, she said something to Mr. Pope about do you realize this man might die if he doesn't get proper treatment and Mr. Pope said, let the son of a bitch die and that was about all that was said in there.

[fol. 266] Q. How long were you in the operating room, you think, at the time you received this treatment?

A. Well, I'd say around half an hour, I don't know but I imagine around half an hour.

Q. When the treatment was given, completed, were you given any medicine to take or anything of the kind?

A. No, just what treatment I have said there was everything that we received.

Q. Immediately after the treatment was completed, then what happened to you?

A. We were taken back to jail and placed, I believe we might have been questioned again, I'm not sure but I know very shortly I was placed back in a cell in the same portion of the jail I had been in the night before but this cell had a bed, not a bed but a slatted cot without a mattress or covering on it.

Q. Now, this Exhibit 6 to 6E, on State's Exhibit 6, can you look at it and tell whether or not there have been two dates placed on that?

A. Yes, it looks as though this 10 has been changed.

Q. There was another date?

A. Yes sir.

By Mr. Ging: I want to call the court's attention to that fact.

Q. While you were at the hospital or any time, did you talk to any attorney or any other person than the doctor, [fol. 267] maybe the nurse and the police officers?

A. No, the only one that I said anything to that I recall was to the doctor and very little to him. I had no conversations with anyone else to amount to anything.

Q. Did you tell the doctor, what did you tell the doctor, do you now remember?

A. He asked me how I felt. I told him that I was in a lot of pain, I explained to him about this left arm. At that time I couldn't move my left arm at all, I could just barely move my fingers a little bit and he told me something about injuring a nerve center, I couldn't understand, didn't understand why the arm hadn't been touched and I couldn't understand why it could be affected when it was not in the arm. He told me the nerve center was damaged.

Q. When you were in the hospital there then, you went directly from the operating room of the hospital back to police headquarters?

A. Yes.

Q. All the time you were in the hospital, were you in pain, weak and suffering?

A. Yes I was.

Q. Lack of nutrition and lack of blood?

To which question and the answer sought to be elicited thereby, the State of Indiana, by counsel, interposed an

[fol. 268] objection for the reason it is leading and suggestive.

By the Court: Objection sustained.

Q. Can you describe to the court your physical condition and your feelings with regard to pain at the time on the trip to the hospital, at the time you were in the hospital and on the way back?

(To which question and the answer sought to be elicited thereby, the State of Indiana, by counsel, interposed an objection for the reason it refers to a time subsequent to the taking of the statement and certainly obviously doesn't refer to the time of taking any statement at all from the defendant's own testimony.)

By the Court: Objection overruled.

A. From the time I was shot and for a long time afterwards, I was having a lot of pain with my arm, in fact, the arm never did get right, it isn't right today and I was weak, I was in a highly nervous condition at that time. I imagine that I was in shock to a certain extent and hadn't eaten anything and I hadn't had any sleep to amount to anything. [fol. 269] Now, during the Saturday night and Sunday night, I stayed in bed all the time after I was shot, practically all the time until after I was arrested and I was arrested about 1 o'clock in the morning, 1:30 in the morning, I hadn't gone to sleep that night, I was questioned all that night and I couldn't sleep the next night so there were several, in fact, for the next couple of weeks, there was very few nights that I could get more than an hour or two of sleep, then only sleep a little while at a time.

Q. Now, when you signed that statement, which you say you signed, that State's Exhibit No. 6, I believe it is, why did you sign it?

A. Well, I signed it because I was, I just wore down, tired of sitting around there arguing about it, I wanted to go to the hospital. I thought I was going to get 1 to 10 years, assault and battery with intent to kill, I might as well sign it, I did shoot the man. Mostly because they were sitting around there arguing about it, I got tired arguing.

Q. How many times, if more than once, did they, the police officers promise you they would take you to the hos-

pital and get you medical attention, if you signed the statement?

A. I'd say 3 or four times.

By Mr. Ging: You may cross-examine.

[fol. 270] Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by John Dailey, one of the attorneys for the State of Indiana.)

Q. Pierce, as I remember, you shot Quinnette on the 7th?

A. That is true, yes sir.

Q. Arrested on the 10th?

A. Yes.

Q. Were you under the impression during that time that you weren't seriously hurt?

A. No, I knew I was seriously hurt. No, I knew I was hurt.

Q. You didn't seek any medical attention?

A. I didn't know any place to seek medical attention.

Q. You didn't know about the City Hospital in Indianapolis, hospitals in Shelbyville, Rushville and all those places?

A. Yes, I knew about hospitals in those places.

Q. Did you take a bath during that time?

A. No, I don't think so.

Q. You just got this sudden desire for a bath after the police picked you up, is that it?

A. No, not that I know of.

Q. You got sick then after the police picked you up?

A. No, I got sick after I was shot.

Q. The reason you didn't get medical attention was be-

[fol. 271] cause you were a fugitive, isn't that right?

A. Yes.

Q. You shot a policeman?

A. That is true.

Q. I guess you had lived a life of crime from the time you were about 14, just in and out of one pen after another?

A. Yes, that is true.

By Mr. Ging: I don't know whether that is an issue here or not.

By the Court: I don't see where that has any bearing on it.

By Mr. Dailey: It is going to his credibility now that he has taken the stand.

By the Court: Go ahead.

Q. Now, this business about Gish, that is the first time you have told that in any of these trials, isn't it?

A. No, I think that came up in the first trial, Mr. Dailey.

Q. You mean back in——

A. 1935.

Q. And you know we don't have any record of that trial, don't you?

A. I don't know whether you do or not.

Q. You know Gish is the only one of these officers that is now dead?

[fol. 272] A. No sir, I didn't know he was dead.

Q. Just happened that he was the one that talked rough to you?

A. No, there is more than him talked rough to me, Mr. Dailey.

Q. Well, did you have any reason for not telling the police officers the truth when they questioned you?

A. Well, I tried to tell pretty well the truth, I wouldn't say all the way, frankly, I was trying to protect a friend of mine out there, most of the things I tried to tell them the truth about it.

Q. Well, then, the statement didn't harm you any?

A. Oh yes, the statement did harm me.

Q. That is the truth?

A. That statement isn't all true, Mr. Dailey.

Q. You did, in conjunction with Joseph, you escaped from Michigan City, that is true?

A. Yes, that is true.

Q. And you did steal a lot of cars after you escaped?

A. No, that isn't true.

Q. You didn't steal any cars?

A. No I didn't, no.

Q. Who did, Joseph?

A. No, I can't say what Joseph did but I didn't steal any.

Q. Did you ride in any stolen cars?

A. No.

Q. The car that you went down to Hedley's home was a [fol. 273] stolen car, wasn't it?

A. Doctor Molten's car, yes.

Q. You knew it was a stolen car, didn't you?

A. Yes, I knew it was a stolen car.

Q. You knew you had been in the apartment with Joseph and Grace Nowling, that is right?

A. Yes, that is true.

Q. You rented it under an assumed name?

A. Yes.

Q. You were living under an assumed name?

A. That is true.

Q. You shot these two officers, you shot them both?

A. No, I didn't shoot Mr. Chatham, no, I shot Mr. Quinnette.

Q. Did Joseph shoot Chatham?

A. Joseph never had a gun.

Q. Chatham was shot, you shot him, didn't you?

A. No I didn't shoot him and I'm almost sure Mr. Chatham shot himself but I didn't shoot him.

Q. He shot himself in the heel, is that what you are saying?

A. He shot himself in the toe, I believe.

Q. Well then, after the shooting, you did go out and take this car away from the old Doctor, isn't that right?

A. That is true.

Q. Went to Hedley's and stayed down there, you didn't turn yourselves in?

A. No.

Q. You didn't call police, didn't ask for medical aid or [fol. 274] anything?

A. No.

By Mr. Dailey: That is all.

(And further this witness saith not in the hearing outside the presence of the jury.)

(And here, the defendants rested on the hearing outside the presence of the jury.)

(And now, the State of Indiana presented the following evidence in the hearing before the court outside the presence of the jury:)

JESSE MCCARTY called to the witness stand and having heretofore been sworn to testify the truth the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on examination in chief, in the hearing before the court outside the presence of the jury, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. Your name is McCarty?

[fol. 275] A. Yes sir.

Q. You are the former police officer of the Indianapolis Police force that has been on the stand here in this case?

A. Yes sir.

Q. During the time that you observed Pierce, after his arrest, during all of that time, any time you saw him from then down to the present, did you at any time hit him?

A. No sir.

Q. Strike him?

A. No sir.

Q. Did you call him a son of a bitch?

A. No sir.

Q. Call him anything?

A. No sir. Only called him by his first name, Paul.

By Mr. Ging: If the court please, that is not rebuttal because this witness didn't testify that Mr. McCarty hit him.

By the Court: We are going into the whole circumstance. Objection overruled.

Q. Now, during any of that time, did you see anyone strike Pierce?

A. No sir, I did not.

Q. Hit him?

[fol. 276] A. No sir.

Q. Now, as I understand, you went to the State House along with some other officers to get Pierce and Joseph?

A. That is right.

Q. You, he remained in your custody the rest of that morning?

A. Yes sir.

Q. And what time was it, the statement taken?

A. We went to the State House about 9 o'clock, was called over there, we got there, Nat Leach and State Officers had Pierce and Joseph and Sylvia Hedley there. After we talked a little bit, Lieutenant Pope found out that the boys had received medical treatment and Doctor Beard said they are physically able to be taken to jail. We brought them back to Police Headquarters, we separated them. I took charge of Pierce with John Giles and we took him into a room there and questioned him. I told him if he wanted to make a statement, it was all right, he didn't have to if he didn't want to. So, he made a statement. I wrote it down.

Q. It was signed then?

A. It was signed right then.

Q. That morning?

A. Yes sir.

Q. By the way, Officer, at the first of this statement there seems to be an overwriting there on the date, can you explain that, directing your attention here to State's [fol. 277] Exhibit 6?

A. Yes, I did that.

Q. What was the occasion for that?

A. I had it the 9th instead of the 10th on there.

Q. Is there any question about ever having the 11th on there?

A. No sir.

Q. It was on the morning of the 10th then that the statement was taken and signed?

A. Yes sir.

Q. And then it was somewhere during the noon hour of that day that he was taken out to the hospital?

A. Somewhere between 11 and 12 o'clock.

Q. You went along?

A. I did.

Q. At that time did anybody strike, beat, stamp this fellow?

A. No sir, not in my presence.

Q. And then after he was returned, I guess he wasn't kept at the hospital?

A. Only long enough to get treatment and get something to eat.

Q. Any doctor say anything to you about him being in

bad shape and should remain in the hospital, hear any nurse say anything like that?

A. No sir.

Q. Were you with him all the time?

A. Yes sir.

[fol. 278] Q. That afternoon, were you with him?

A. Yes sir.

Q. What were you doing then?

A. We came back to headquarters and took an additional statement.

Q. What did that concern?

A. That concerned his activities along with Joseph's after the escape from Michigan City.

Q. And up to the time of the shooting?

A. Yes sir.

Q. When did he go to court the first time?

A. Well, I couldn't recall now just when it was.

Q. Did you have any further dealings with him after that day of the 10th?

A. No sir, other than after Quinnette died. Yes I did too, on the 13th we took him to the hospital.

Q. You took Pierce out there?

A. Yes sir.

Q. Took him into Quinnette's room?

A. That is right.

Q. That was the identification day?

A. That is right.

Q. Did the defendant make any claims to you about his suffering injuries when you were questioning him?

A. Didn't make none to me.

Q. Did you observe whether or not he had the use of his left arm?

[fol. 279] A. I didn't pay any attention to him but he was pretty active.

Q. He complain about having chills?

A. No sir.

Q. Did he complain about having fever?

A. No sir.

Q. Never complained of being hot or cold?

A. Never complained to me at all.

Q. Officer Gish, is he now deceased?
A. Yes sir, he is dead.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Never asked for a drink of water, did he?
A. He didn't ask me for any, no sir.
Q. How old are you?
A. 74.
Q. This occurred more than 18 years ago, didn't it?
A. Yes sir.
Q. And everything you testified about, you have now a distinct recollection of, don't you?
[fol. 280] A. Yes sir.
Q. And you were on the police force for how many years?
A. 27.
Q. You have taken many statements from many different people in that period of service, haven't you?
A. Yes sir.
Q. And do you have a distinct recollection of the contents of all the hundreds or thousands of statements you have taken in your experience as a police officer?
A. No, but I guess if the case were to be called for trial again, I could go back in the note book and refresh my memory.
Q. You could refresh, you could testify from memory only after you had been, read all police files regarding the matter, that is what you testify to?
A. Other than as I said, if I'm going to have to appear in another trial, I can go back to my notebook and refresh my memory if I have been notified what the case is going to be.
Q. And that is what you did in this case?
A. I did, yes sir.
Q. And you also had some rehearsals with the other police officers regarding the facts in this case?

A. No sir.

Q. Before you came here to testify?

A. No sir.

Q. You mean to tell me you never talked to any of these [fol. 281] police officers before the November trial?

A. No sir.

Q. And before this trial?

A. Never talked to them about what the testimony would be. I might have talked about the case, yes, but I didn't tell them what the testimony would be.

Q. You mean to say you didn't talk to the Prosecuting Officials, Prosecuting Attorneys and rehearse what your testimony would be?

A. No sir.

Q. They didn't know what you were going to testify when they put you on the witness stand?

A. I don't think they did.

Q. Were you in the questioning room all the time with Paul Pierce?

A. Yes sir.

Q. And you say he was taken into that questioning room about when?

A. After we brought him from the State House, I imagine between 9 and 10 o'clock.

Q. When did he sign the statement?

A. About hour and a half, two hours before that.

Q. You went through all the details, questioning him about the matters that are written down in that statement, didn't you?

A. Yes, we talked to him about the case, yes.

Q. And didn't have any conflict of ideas as to what should [fol. 282] go into the statement?

A. No, we just asked him what happened up there.

Q. He told you all about it, gave you the license number of this car and all that sort of thing?

A. No sir, didn't give the license number of the car.

Q. They were supplied?

A. Yes sir.

Q. Put in the statement?

A. Yes sir.

Q. It wasn't altogether a voluntary statement from Paul Pierce, was it?

A. Outside of the automobile license, yes sir.
Q. Everything?
A. Yes sir.
Q. You know the name of the doctor whose car it was?
A. I do, yes sir.
Q. Did he?
A. He didn't know at the time.
Q. He got some of this information that you put in the statement from you police officers, didn't he?
A. Some of it yes.
Q. What else did he get, what other information did he get from you police officers that you graciously put in the statement?
A. I told him the numbers on the revolver he used in the shooting.
Q. He gave you the license number of the Ford coach, [fol. 283] license of Grace Nowling?
A. No sir, he didn't, not me.
Q. That is in the statement, isn't it?
A. I got it from another party.
Q. Is all this in your handwriting?
A. Yes sir, outside of his signature and John Giles signature.
Q. He told you all about, that he had the 38 caliber, nickel plated Smith and Weston revolver, he told you about that?
A. He did.
Q. That wasn't your description of it, that was his description?
A. That is right.
Q. And the number, manufacturer's number, that was also supplied by Paul Pierce too, wasn't it?
A. No sir.
Q. You say that he told you there were three men came to the apartment, didn't he?
A. When they first came up there, yes sir.
Q. And then he told you all these various steps that you have got listed in this, in this exhibit, is that right?
A. He did, yes.
Q. And this is his exact language in other words, that you incorporated in the statement.
A. I wouldn't say exact language, practically his exact language, yes sir.

[fol. 284] Q. I will call your attention, he made this statement to you, did he? "After I emptied my 38 caliber Smith and Weston Revolver, No. 49569 at Orville Quinnette, I ran back into a small bed room", those are his exact words, are they?

A. Yes sir.

Q. "And grabbed a brief case", those were his exact words?

A. Yes sir.

Q. And his exact words, "After we got into the alley in the rear of apartment, we ran north to 13th Street, we saw an automobile coming east on 13th Street" those are his exact words, aren't they?

A. Yes sir.

Q. You remember that as a matter of your own memory which occurred more than 18 years ago?

A. That is right.

Q. You put it in here "we made this man who I was informed by Detectives John Giles and Jesse McCarty that this colored man was Doctor Edmond B. Moten, 1330 Cornell Avenue and that Doctor Edmond B. Moten was the owner of this car. Which was a 1935 Dodge Coupe License 12779—Motor D-W-27743, serial number #3780041, Case #111489" that was all supplied by you?

A. I told him that, yes.

Q. Gish told him some of it too, so this wasn't a statement as to what necessarily, as to what happened, there was a lot of information that you wrote in the statement that [fol. 285] wasn't his language at all?

A. After I informed him what the license number and motor number was, I put it in.

Q. You wrote it in and incorporated it in his statement?

A. That is right.

Q. Now, you say that you didn't know, you knew that Pierce had been shot through the chest, through the left chest?

A. He told me he was, yes.

Q. You tell this court that you didn't know he was suffering any pain?

A. I couldn't see any, he didn't complain to me.

Q. And he didn't complain about being cold and then hot?

A. No sir.

Q. You could tell by looking at him and the way he acted that he didn't have any fever, couldn't you?

A. Looked natural to me that day.

Q. You didn't care whether he had any fever or not that day, isn't that true?

A. Didn't concern me, Mr.

Q. You didn't care whether he was suffering pain or not?

A. I couldn't help him any, if he was.

Q. You didn't care if he was weak from the loss of blood?

A. I couldn't help him. He didn't ask for any help.

Q. You say that you were in the questioning room all the time?

A. Yes sir.

[fol. 286] Q. Never left?

A. Not until we got through there.

Q. And the whole thing, all the interrogation and the argument, whatever there was, and the writing and placing of signatures on this statement only took and hour, or hour and a half?

A. Just about that, two hours, maybe.

Q. Six pages of it?

A. Yes sir.

Q. Got all this information, got it down in writing, everybody signed it in that short space of time, didn't you?

A. Yes sir.

Q. Even though Mr. Pierce was gravely injured, you knew he had lost a lot of blood, hadn't had medical attention, weak, nervous and sick, you knew that, and yet, it only took that length of time to get all this information from him and get it put down on this exhibit, is that right?

A. Yes.

Q. You never left that interrogation room, did you?

A. No sir.

Q. Not a single time?

A. After we got through I left there.

Q. From the time you got there from police headquarters until the statement was signed, you were in there every minute of the time?

[fol. 287] A. Yes sir.

Q. Do you now say, was John Gish in there?

A. No, John Giles, wasn't John Gish.

Q. He wasn't ever in there?

A. Not that statement, no sir.

Q. He didn't witness the statement, but isn't it a fact that he was in there and there were numerous other officers in there?

A. Might have been a lot of them pass through. I never paid any attention to them.

Q. Fred Simon in there?

A. I never seen him.

Q. Don't you remember when they had him down on the floor and Gish was kicking him?

A. No sir.

Q. Fred Simon came in, your Chief, and said, here, cut that out?

A. No sir, I did not see that or hear it.

Q. You never saw a police officer mistreat a prisoner in your life?

A. Yes, in self defense.

Q. I'm talking about when giving them the third degree, to try to make them confess to something, you never saw a police officer lay hands, or hit him, or threaten him or do anything except give him the kindest of treatment?

A. No, we never use third degree methods there.

[fol. 288] Q. At the other trial, just the morning of the trial, or during the trial, wasn't it a fact that one of your police officers assaulted an ex-soldier at the Union Station?

By the Court: Objection sustained.

Q. Now, here is some more of his exact language: "We drove to 2918 School Street and passed the home of Grace Nowling, honked the horn on the car but we did not stop", those are his exact language?

A. That is what he told me.

Q. "Then drove to Road 29 through Shelbyville to Road 244"?

A. Yes sir.

Q. "And then drove to the home of Sylvia Hedley which is close to Goudy, Indiana" those are his exact words, aren't they?

A. Yes sir.

Q. Now, he says here and these are his exact words, are they "And we then took Sylvia Headlees Chevrolet Sedan, I doing the driving and took the Dodge Coupe which we had

taken away from Doctor Moten in Indianapolis and drove it, Donald Joseph doing the driving to near St. Omer, Indiana where we left it". Those are his exact words, he told you that he drove the Chevrolet car?

A. That is what he told me.

Q. And you put it down just exactly?

A. Like he told me, yes sir.

[fol. 289] Q. Then just about as soon as you got back to police headquarters, you started to write, didn't you?

A. You mean after we had taken them out there for treatment?

Q. No, I mean before.

A. Yes, after the doctor told us he was——

Q. Before the statement was signed?

A. After the doctor told us he was able to go back to police headquarters.

Q. I'm not talking about that. Before the statement was signed, as soon as you got back from the police headquarters, you started to write this confession?

A. I didn't start writing the confession, started talking to him.

Q. How long did you talk to him?

A. I imagine 15 minutes, 20 minutes.

Q. That is all, then you started to write, he was anxious and did give you, cooperate and give you all the information that you put in this 6 handwriting pages, is that right?

A. Yes, he gave us, we asked him questions and he would answer them.

Q. He never made a single request of you, before he signed that statement, for a lawyer?

A. No sir, he did not.

Q. For a doctor?

A. No sir.

[fol. 290] Q. For hospitalization?

A. No sir.

Q. For medical attention?

A. No sir, he did not.

Q. For water?

A. No.

Q. Or for food?

A. No sir.

Q. Or that his father and mother or some of his friends come and see him?

A. He never asked me about his father and mother or friends.

Q. Prior to the time he signed the statement, from the time you had control of him, he was not taken before a magistrate, was he?

A. No sir.

Q. Or judicial officer?

A. No sir.

Q. Or City of Indianapolis?

A. He never asked for any.

Q. He never asked for any attorney?

A. No sir.

Q. He never asked for the opportunity to talk to an attorney or be advised by an attorney?

A. He did not.

Q. Or to advise with his parents or relatives or friends?

A. He never mentioned them at all.

Q. He never had the name of an attorney in his pocket, a [fol. 291] card of an attorney?

A. I never seen no card, I never seen no attorney's name.

Q. Did you hear Pope say, when they left the State House, why don't you run now, you son of a bitch?

A. No, I didn't hear that.

Q. You don't suppose that language was used?

A. If it was, I didn't hear it.

Q. Your hearing was good at that time?

A. Yes sir.

Q. You say he made no complaints?

A. Never complained to me, no sir.

Q. About how he felt?

A. No sir.

Q. About him being weak, about him suffering pain and you say that even though his left arm was paralyzed, you didn't know anything about that?

A. No I didn't.

Q. And you knew that he had lost a lot of blood?

A. He didn't look it, I didn't see any.

Q. And you knew he had been shot through the chest and the bullet came out through the back?

A. I heard he had been shot.

Q. You didn't examine him to see if he had been shot?
A. No sir.
Q. See any blood on him any place?
A. No sir, I did not.
Q. And he just looked to you just like a normal citizen?
[fol. 292] A. That is right.
Q. Not suffering pain, not in fever, not hot or cold flashes, nothing, see any perspiration break out on his forehead?
A. No sir.
Q. He quietly cooperated there and sat there, didn't ask a favor and when you wrote that statement out, he signed it?
A. He signed it, yes.
Q. Did you read it to him?
A. Yes sir.
Q. Did he read it?
A. No, I read it to him.
Q. Oh, you read it to him, all of it?
A. Yes sir.
Q. And then he signed it?
A. He did.
Q. Before noon on the first day, on the 10th of December?
A. Yes sir.

By Mr. Ging: That is all.

Redirect examination.

(The said witness testified further as follows on redirect examination in response to questions propounded by John Dailey, one of the attorneys for the State of Indiana.)

[fol. 293] Q. By the way, officer, did you promise Pierce anything if he would make a statement?
A. No sir, I did not.
Q. Did you offer him any immunity or anything of that kind?
A. No sir.
Q. Hear anybody offer him anything?
A. No.

By Mr. Dailey: That is all.

(And further this witness saith not in the hearing outside the presence of the jury.)

JOHN GILES called to the witness stand as a witness in behalf of the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on examination in chief in the hearing before the court, outside the presence of the jury, such examination in chief being conducted by John Dailey, one of the attorneys for the State [fol. 294] of Indiana.

Q. Your name is John Giles?
A. That is right.
Q. Former member of the Indianapolis Police Force?
A. Yes sir.
Q. You questioned Paul Pierce on or about the 10th of December, 1935 along with Officer McCarty?
A. I did.
Q. Did you go over to the State House, along with McCarty and Pope?
A. No, I didn't go.
Q. When did you first see him?
A. After they were brought to headquarters.
Q. How long did they, did you stay with them when first brought back?
A. During the time Jesse and I talked to him and took the statement.
Q. Go to the hospital?
A. No sir.
Q. Just with him during the time the questioning was taken?
A. That is all.
Q. During that time, did you see anybody strike him or hit him?
A. No sir.
Q. Or twist his arm?
A. No.
[fol. 295] Q. Did he ask for water?
A. I don't remember, if he did, he got it.

(Thereupon, the defendants, by counsel, separately and severally moved the last part of the answer be stricken out, if he doesn't remember.)

By the Court: Strike the last part out.

Q. Did you hear him complain of his injuries?

A. No sir.

Q. You promise him anything, if he would make a statement?

A. Not a thing.

Q. Did you see anybody hit him or knock him down?

A. I did not.

Q. There is an Officer Gish that has been mentioned, was he in there during the time the statement was taken?

A. He was not.

Q. Did you at any time see Gish knock him down and bust his jaw or anything like that?

A. No sir.

Q. Did you see any marks on Pierce's face, any injuries or anything like that?

A. I did not.

Q. That statement there, marked State's Exhibit 6, on the first page and on down through E, is that the statement Pierce made to you?

[fol. 296] A. It is, yes sir.

Q. That is his signature?

A. Yes sir.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows on cross-examination in the hearing before the court outside the presence of the jury, such cross-examination being conducted by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Weren't there other police officers went to the State House and got these men?

A. I wasn't with them.

Q. Who went, you know?

A. I don't know.

Q. Who brought them in?

A. I wasn't at the headquarters when they were brought in. I might have been there, I didn't see them brought in. After they were in there, they asked me to go back and take the statement. I was interested in the automobile end of it.

Q. At that time, you were on the atuomobile investigation squad, whatever they called it?

[fol. 297] A. That is right.

Q. Did you take any part in this questioning?

A. Yes.

Q. Other than to be present?

A. Yes, I asked him questions.

Q. You didn't write any of this?

A. No, Jesse wrote the statement.

Q. When did you get in there, John?

A. As soon as they brought them in, before we started to take any statement.

Q. How long did the entire procedure last?

A. I imagine two hours.

Q. You got all this information from Mr. Pierce and got it all written down, read over to him and signed by everybody who did sign it, all in that period of time?

A. Mr. Pierce talked very freely and it didn't take too long to take it.

Q. You knew that he had been shot?

A. He said he had.

Q. You didn't investigate that, did you?

A. No, he said he took care of his own wound while down in the country.

Q. Did he say anything about being in pain?

A. No sir.

Q. Or being cold or hot?

A. Not a word.

Q. Nothing was said about him being weak from the loss [fol. 298] of blood?

A. No sir.

Q. Roy Pope in there?

A. No sir.

Q. He wasn't in there?

A. No sir.

Q. John Gish in there?

A. No sir.

Q. Were you in there all the time?

A. Yes sir.

Q. Every minute of the time, from the time the interrogation started until he was, until he was released?

A. That is right, until the statement was signed.

Q. The fact is, and was there anything said about him needing medical attention or being taken to the hospital?

A. Wasn't a word said.

Q. Fact is, as soon as he signed the statement, he was taken to the hospital, wasn't he?

A. I don't know about that, I didn't go with him.

Q. You didn't go?

A. No sir.

By Mr. Ging: That is all.

(And further this witness saith not in the hearing before the court, outside the presence of the jury.)

[fol. 299] Roy Pope called to the witness stand by the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth, relating to said above entitled cause, testified as follows in the hearing before the court, outside the presence of the jury, in examination in chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. Your name is Roy Pope?

A. Roy Pope.

Q. You are a former member of the Indianapolis Police Department?

A. Yes sir.

Q. You worked on the case of State of Indiana vs. Pierce and Joseph, murder of Quinnette?

A. I had charge of that investigation, yes.

Q. You remember going to the State House to get Pierce and Joseph?

A. Yes sir.

Q. Remember the trip back to police headquarters?

A. Yes sir.

Q. You call Pierce a son of a bitch?

[fol. 300] A. No, I never called him a son of a bitch.

Q. After you got back to police headquarters, did you stay with him?

A. I was, I walked, went from the State House to Police Headquarters with both of them but then I took Joseph in a room by himself and questioned Joseph.

Q. You remember when Pierce went to the hospital?

A. Yes sir.

Q. Didn't Joseph go with him?

A. On the 10th, yes.

Q. Now, you go out with them and return?

A. I did.

Q. Did you see them any more that day?

A. Yes, we took them back to headquarters, took an additional statements.

Q. How about the 11th, did you have anything to do with them that day?

A. No, I had nothing to do with them. No statement was taken on the 11th.

Q. At the time, during the entire day of the 10th, did you see anybody hit or strike Pierce?

A. No, nobody.

Q. You promise anything if he would make a statement?

A. No sir.

Q. He said that he had a calling card of a lawyer and that he gave it to you and you threw it on the pavement, you remember that?

[fol. 301] A. No sir, that didn't happen.

Q. Did Pierce make any complaints about his injuries?

A. He did not.

Q. He say he was hot or cold?

A. No he didn't say anything about it, he didn't complain about it.

Q. Do you remember him having 12 glasses of water at the State House?

A. No, I don't recall of him having 12 glasses of water, no. I wasn't there.

Q. You know an officer by the name of Gish?

A. Yes sir.

Q. He is now deceased?

A. That is right.

Q. You see him at any time knock Pierce and hit him in the jaw?

A. I did not.

Q. Ever see any marks on Pierce's face, bruises of any kind during those days?

A. No sir.

Q. As to whether or not Pierce, did you have any conversations with Pierce over at the State House to the Police Headquarters?

A. Yes, we talked about the case coming over.

Q. Regarding the shooting of Quinnette?

A. That is right.

Q. As to whether or not he talked freely?

[fol. 302] A. He did.

Q. Did you promise him any immunity or anything like that, if he would tell all?

A. No sir.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows on cross-examination in the hearing before the court, outside the presence of the jury, said cross-examination being conducted by Waldo C. Ging, one of the attorneys for the defendants.)

Q. When you started out of the State House, you said, why don't you run now, you son of a bitch?

A. I did not.

Q. You are sure of it?

A. I'm absolutely sure.

Q. You never did call Pierce or any other prisoner of yours?

A. No sir.

Q. That language would not be used by you under any circumstance, would it, Mr. Pope?

(No answer by witness.)

Q. Now then, don't you remember of, when you were in [fol. 303] there during some of this interrogation that Mr. Pierce asked you for an attorney?

A. No, he never did.

Q. Get an attorney for him?

A. Never asked me.

Q. Don't you remember he gave you the business card of Ernest Owens, an Indianapolis attorney?

A. He did not.

Q. And that you throwed it on the floor and said you don't need a lawyer?

A. Nothing like that was said.

Q. Don't you remember that, were you present at all times during the questioning of Mr. Pierce?

A. No, I wasn't.

Q. So you don't know what happened then, do you in there, necessarily?

A. I wasn't in that questioning room.

Q. You weren't in there when John Gish knocked him down and kicked him and all that sort of thing?

A. John Gish didn't knock him down to my knowledge.

Q. You weren't in there, were you?

A. No.

Q. So, you don't know of your own knowledge whether he kicked him or hit him in the face or kicked him or not, do you?

(No answer by the witness.)

Q. Did you see Fred Simon in there, isn't it Fred Simon [fol. 304] that used to be Chief of Detectives?

A. No, I didn't see him. He was at Detective Headquarters, I never saw him in the roll call or questioning.

Q. Didn't you hear Mr. Pierce say that he was in pain and he had lost a lot of blood, he was sick, he was hot, he was cold, he was weak and asked for hospitalization and medical treatment?

A. I heard him say that on the witness stand. I never heard him say it when the statement was taken or during that day.

Q. Did you know that his left arm was paralyzed at that time?

A. Didn't show any signs of his arm being paralyzed.

Q. Did you examine his wounds yourself to see whether they were sterile, whether they had been treated in any way?

A. He was, investigated and handled at the State House by Doctor Bird, then we took him to the City Hospital and had him checked again.

Q. Were you present when he signed this statement?

A. When who signed the statement?

Q. Pierce signed this statement?

A. No.

Q. As soon as he did sign the statement, he was taken to the hospital, that is true, isn't it?

A. After he and Joseph both signed the statements, between 9 and near 12 o'clock on the 10th, we did take them to the hospital.

[fol. 305] Q. As soon as they signed the statement, they were taken to the hospital for medical treatment, weren't they?

A. Shortly after that but I don't know the exact time, maybe 30 minutes, maybe an hour.

By Mr. Ging: That is all.

(And further this witness saith not in the hearing before the court outside the presence of the jury.)

(And now, the State of Indiana rests on the hearing before the court, outside the presence of the jury.)

(And here, the jury is returned into open court and the trial of this cause is resumed before the jury.)

Offers in Evidence, etc.

By the Court: The objection to the introduction of State's Exhibit 6 through E is overruled and they are now introduced in evidence as to Paul Pierce and the objection is sustained as to the defendant, Donald Joseph and State's Exhibit 6 through 6E will not be considered in any way as to the issue as to the defendant, Donald Joseph but only [fol. 306] as to Paul Pierce.

Jesse McCarty recalled to the witness stand and having heretofore been sworn to testify to truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on examination in chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. State your name.

A. Jesse McCarty.

Q. You are the same Jesse McCarty that was testifying

here Friday, at the time of adjournment or at the time the jury was excused?

A. Yes sir.

Q. Officer, directing your attention again to State's Exhibit 6 and 6A through 6E, there appears at the top of these respective pages a number in pencil or pen 11489, you know how that happened to be there?

A. No I do not.

Q. That is not a part of this original statement?

A. No sir.

And here, the State of Indiana introduced and read in evi-
[fol. 307] dence the document above referred to which is marked for the purpose of identification as States's Exhibits 6, 6A, 6B, 6C, 6D and 6E which Exhibits, so introduced and so read in evidence are in the words and figures following, to-wit:

STATE'S EXHIBIT No. 6
STATEMENT OF PAUL PIERCE

111489 P.A.P.

December 10-1935

My name is Paul Arvine Pierce and I am 25 years old and I live at 1201 Park Ave. Apt #5. The Hazel Dell. On November 29th 1935 Donald Joseph who I have been running around with and Grace Nowling a girl friend of Donald Joseph went to 1201 Park Ave. and rented an appartment. And we had made an agreement to meet at the Real Silk Hoosiery Mills I went there. And about 11:45 am on date mentioned above. I met Donald Joseph and Grace Nowling who drove up in a Taxi Cab. Grace Nowling went back into the Real Silk Mills where she works. And myself and Donald Joseph took this Taxi Cab to the Indiana Threatre, got out and dismissed the cab. And we got out and looked at the pictures in front of the Indiana Theatre. We did not like the looks of these pictures. And we walk over to the Lyric Theatre saw the show. And then went to the apt [fol. 308] which Donald Joseph had rented this morning. And we stayed in this appartment until Friday morning December 6th 1935 myself and Donald Joseph used Grace Nowlings Ford coach License #M110. And drove to Cave

City Ky taking a girl with us. But I refuse to tell who this girl is. And about 9 PM this same date we arrived in Indianapolis Ind from Cave City Ky. And we went to apt stayed a while and left. And went to another

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STATE'S EXHIBIT No. 6A

(2)

111489 P.A.P.

girls home and stayed all night. And I would sooner not tell who this girl is. And on Saturday morning December 7–1935, We left this girls home and drove up town using Grace Nowlings Ford Coach License #M110. We bought some groceries. got some clothes we had at a cleaning establishment. We then went home parking the Ford Coach on the Park Ave side and went to the appartment. Then about 1:30 or 2 P.M. myself and Donald Joseph were in the appartment. When a knock came on the door. We had the door locked. I went to the door unlocked same. And I opened the door. And at this time I had a Smith and Wesson 38 caliber Nickel plated revolver in my right hand overcoat pocket. Which I was informed by Detectives John Giles and Jesse McCarty had number #45969 on same. And when I opened the door and I saw three men standing in the door way. And I Paul Pierce said come in. And one of these three [fol. 309] men said we are from Detective Headquarters and one of these men I am unable to tell said we want to talk to Mr. Coleman. And both myself and Donald Joseph spoke up at the same time and said I am Mr Coleman. Then I Paul Pierce pulled the 38 caliber Smith and Wesson Revolver I had in my right overcoat pocket out. And pointed this revolver at these two men who said they from Detective Headquarters and told them to stick them up. And these

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STATE'S EXHIBIT No. 6B

(3)

P.A.P.

two men did not stick them up. I mean by saying stick them up That I demanded they stick their hands up. After

these two men which I was informed by Detectives John Giles and Jesse McCarty were Orville Quinnette and Russel Chatham members of the Indianapolis Ind Police Dept ranking as Detectives Sergeants got into the apt. Orville Quinnette drawed his revolver. And we both started to shooting. But I do not know who shot first. And Donald Joseph and Russell Chatham started to fighting. While myself and Orville Quinnette were shooting at each other I saw Orville Quinnette fall to the floor between the davenport and wall. And about this time I spun around. And fell to one knee. And Russell Chatham and Donald Joseph were on the davenport fighting. After I emptied my 38 caliber Smith and Wesson revolver #45969 at Orville Quinnette I ran back into a small bed room. And grabbed a brief [fol. 310] case. Took a 38 caliber Colts revolver out of this brief case. Then throwed the brief case out into the living room. And I fired another shot. And I think this shot hit Russell Chatham. I fired this shot while I was in the living room. And while Russell Chatham and Donald Joseph were out in the hall fighting. And Donald Joseph must of got away from Russell Chatham. And came back into the appartment and I told Donald Joseph

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STATE'S EXHIBIT No. 6C

(4)

111489 P.A.P.

to grab the brief case which I had thrown on the floor in the living room. And we both ran out the back way of this apt house. As I knew there was a back way. And after we got into the alley in rear of apt. We ran north to 13th St. and when we got to 13th Street we saw an automobile coming east on 13th St. And when this car got to about the alley, we both ran out to it and I put my Colts revolver on this man who was a colored man. He stopped. I opened the door on right side of this car. And Donald Joseph went around to left side of car. And we made this man who I was informed by Detectives John Giles and Jesse McCarty that this colored man was Doctor Edmond D. Moten, 1330 Cornell Ave. and that Doctor Edmond D. Moten was the owner of

this car. Which was a 1935 Dodge Coupe License 12779 Motor D-W-27743 serial number #3780041 Case #111489. [fol. 311] assigned to Detectives John Giles and John Gish get out of this car. And Donald Joseph took the wheel and while Donald Joseph was driving, I Paul Pierce shifted the gears. We then drove to 2918 School Street and passed the home of Grace Nowling honked the horn on the car but we did not stop. We then drove to Road #29 through Shelbyville Ind to road #244. Then drove to the home of Sylvia Headlee which is close to Gowdy, Ind. We then went into the house which I think

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STATE'S EXHIBIT No. 6D

(5)

111489 P.A.P.

was a little after 3 P.M. And there was no one at home at this time but Mrs. Headlee wife of Sylvia Headlee. And we told her we had been accidentally shot. We dressed our wounds. And stayed around the house until about 7 P.M. and we then took Sylvia Headlee's Chevrolet Sedan I doing the driving And took the Dodge Coupe which we had taken away from Doctor Moten in Indianapolis and drove it Donald Joseph doing the driving to near St. Omer Indiana where we left it. Before we left Sylvia Headlee's home with the Dodge Coupe we took an instrument case and some bird seed which was in the Dodge Coupe out and left same at Sylvia Headlee home. We then drove back to the home of Sylvia Headlee in his Chevrolet Sedan. And stayed there until we were picked up by the Indiana State Police and brought back to Indianapolis Ind. At no time did myself or Donald Joseph tell Sylvia Headlee or any member of his [fol. 312] family what we had done in Indianapolis Saturday afternoon December 7–1935. But on Sunday morning December 8–1935 Sylvia Headlee and his wife drove to Shelbyville Ind and got a paper. And I told them to bring me an Indianapolis Star and they did. And I read about the shooting we had in the appartment with Detectives Orville Quinnette and Russell Chatham.

STATE'S EXHIBIT No. 6E

(6) P.A.P.

Am making this statement with my own free will and accord knowing it will be either used for or against me in court. And it is the truth. And I also want to state that I was not forced by being beat or whipped while making same.

Witness
Jesse McCarty
John W. Giles

Signed Paul Arvine Pierce

Q. Now Officer, after this statement was written and signed by Pierce, what happened next, if anything?

A. We took them out to the City Hospital then.

Q. Who is we?

A. Myself and Lieutenant Pope and Tom Auls.

Q. Did you all ride together?

A. Yes sir.

Q. Was there any conversation in the car on the way out [fol. 313] with the defendant Pierce?

A. No.

Q. What occurred at the Hospital?

A. We went up there at the hospital for the purpose of getting him identified by Orville Quinnette. We met Doctor Myers, Kohlsteadt and Doctor Blackford and asked them if it would be all right to take Pierce and let Quinnette look at him. They told us to wait a minute.

By Mr. Ging: I think conversation that was had with somebody else, unless shown within the presence of these defendants wouldn't be competent.

By the Court: That is right, unless the defendant was there.

Q. Officer, aside from conversations with the doctors, what happened?

A. They went in his room, came out and told us that he was rational.

Q. No, not what the doctors told you. What did you do with Pierce?

A. We took Pierce into Quinnette's room.

Q. That was the day the statement was taken?

A. Yes sir.

Q. And when you went into Quinnette's room, just tell who all went in there.

A. Myself, Lieutenant Pope, Tom Auls and Pierce.

[fol. 314] Q. What occurred in there?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection for the reason that is certainly not a part of the res jesta and it happened a long three days after the actual killing and after this purported confession which has been read to the jury and couldn't now be of any positive value or proof or disproof of any fact necessary in this case.)

By the Court: Objection overruled.

Q. You said the defendant was there?

A. He was there with us, yes sir.

Q. All right then, what happened?

A. Quinnette looked at him and said, pointed his finger at him, says, there is the man that shot me and never gave me a chance.

Q. What did the defendant say?

A. Never said anything.

Q. What did you do?

A. Went down stairs, got in the car and came back to [fol. 315] headquarters.

Q. At any time when you were in there, did anybody examine the defendant Pierce?

A. Not that morning, no.

Q. Then you returned to police headquarters, you are talking about the day you took the statement?

A. Yes, he was examined that day. This was a later date we took him before Quinnette.

Q. I guess you misunderstood me. I was asking about what happened the day you took the statement, immediately after taking the statement.

A. Took Pierce and Joseph both back to the hospital.

Q. That is the occasion I'm inquiring about, what happened then?

A. They got medical treatment.

Q. Did you see that?

A. Yes sir.

Q. And a doctor provided?

A. Yes sir.

Q. How long were you at the hospital?

A. I imagine 45 minutes.

Q. And then what, where did you go?

A. Back to headquarters.

Q. And did you have any conversation with the defendant Pierce to or from the hospital?

A. Not until after we got back to police headquarters on this date.

[fol. 316] Q. Where was this conversation?

A. In the Detective Department interrogation room.

Q. Did that relate to the shooting of Orville Quinnette?

A. No sir, we didn't talk to him about Quinnette after that.

Q. After that conversation with the defendant, did you have any further connection with the case?

A. I did.

Q. What was that?

A. Well, after we had taken this additional statement which Pierce, which pertained to his activities after his escape——

(To which answer, the defendants, by counsel, separately and severally objected and moved the court to have the same stricken from the record.)

By the Court: Strike out all after we had this conversation and the jury will not consider the part stricken out.

Q. After the conversation that afternoon, you said you took an additional statement, then did you do anything else in connection with this case?

A. Nothing only take them up in jail.

Q. Now, a while ago, when you misunderstood my question, you testified about taking Pierce out to the hospital [fol. 317] in Quinnette's room.

A. That was on December 13.

Q. That was as you have related to the jury in your previous testimony?

A. Yes sir.

Q. Was there any conversation with Pierce, either going out or returning from the hospital?

A. Some on the way back, yes.

Q. Did you participate in it?

A. I did some of it.

Q. That was with the defendant, Pierce?

A. Yes sir.

Q. Tell the jury in substance what was said.

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, interposed an objection separately and severally for the reason that is not part of the res jesta, they have already introduced a purported confession, both oral and written and any conversation had after further identification that he has testified about at the hospital by the wounded officer couldn't be relevant or [fol. 318] material in this case and wouldn't tend to prove or disprove any fact that the state is required to prove in this case.)

By the Court: Objection overruled as to the defendant Paul Pierce and sustained as to the defendant, Donald Joseph and whatever evidence will be given in response to this question will not be considered by the jury on the issue as to the defendant, Joseph.

Q. Now, the substance of the conversation with Pierce.

A. On the way back, I was sitting in the back seat with Pierce, Tom Auls in the front seat with Pope, Auls doing the driving. Lieutenant Pope asked him about a hold-up in Anderson, Indiana.

By the Court: Objection sustained, if that is what you are getting to. Strike out the answer, the jury will not consider it in any way as to either of the defendants.

Q. Did you have any conversation related to the shooting of Quinnette?

A. Yes.

Q. Stick to that part of the conversation.

[fol. 319] A. I asked Paul Pierce, after Quinnette and Chatham identified themselves as Detectives, what made him shoot so quick. He said, I would have shot any damn copper that would have walked in that doorway.

Q. Was Joseph along on that ride?

A. No sir.

Q. Now, after that ride, did you have any further connection with this case?

A. After we got into headquarters, I asked him one more question, yes.

Q. Who was present then?

A. John Gish?

Q. And yourself?

A. Yes sir.

Q. Now, did that relate to the shooting of Quinnette?

A. Yes sir. No, I'll take that back. I asked him about where he got the——

Q. No, wait a minute.

A. I asked him where he got the gun that he shot Quinnette with.

Q. Go ahead and relate the substance of that conversation.

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection for the reason it is not part [fol. 320] of the res jesta and isn't relevant or material and doesn't tend to prove or disprove any fact required to be proven by the State.)

By the Court: Objection overruled as to Paul Pierce and sustained as to Donald Joseph and whatever evidence is given will not be considered against the defendant, Donald Joseph.

Q. Tell what was said.

A. After I asked him where he got the gun he told me he stole it out of an automobile in Shelbyville, Indiana.

By the Court: I believe I will strike out all of that testimony. Objection sustained and the answer will be stricken out and the jury will not consider it in any way against either of the defendants.

Q. Now Officer, after that conversation, did you have any further investigative work in this case?

A. Yes.

Q. What was the next thing you did?

A. Well, we went out trying to find witnesses that seen the shooting, all the information we could find.

Q. Did you have any other conversations, after that, with [fol. 321] the defendant, Pierce?

A. I didn't, no.

Q. Or Joseph?

A. No sir.

Q. And your part in this whole investigation was in connection with the participation of the defendant, Pierce?

A. That is right.

Q. And all these facts about which you testified occurred in Marion County, Indianapolis, Marion County, State of Indiana?

A. Yes sir.

By Mr. Dailey: You may cross-examine.

Motion to Strike Testimony of Jesse McCarty and Ruling Thereon

By Mr. Ging: Now, at the conclusion of this witnesses direct testimony, I would like to move, on behalf of the defendants and particularly on behalf of the defendant, Paul Pierce, that all of the oral testimony given by this witness be stricken from the record and the jury instructed not to consider it as any evidence in this trial for the reason that at the time of the alleged conversations, this officer [fol. 322] had with the defendant, Paul Pierce, he was under arrest and under the control of this police officer and other police officers, was not at liberty, as an ordinary citizen, but was in their custody and control and that the conversations this man had as an officer with the defendant, Paul Pierce, were had at a time when Paul Pierce had, prior to any time when Paul Pierce had been taken before a magistrate or judicial officer and informed as to his constitutional rights and prior to the time when he had been permitted to talk to and advise with an attorney as to his rights and prior to the time when he had been permitted by these officers to be interviewed or advised with any of his relatives or friends and that the alleged statement, conversation that this witness has testified to was not voluntarily made by Paul Pierce but was made at a time when he was [fol. 323] seriously wounded, suffering great bodily pain and was fearful of infection and probable fatal results from the gunshot wound which the testimony shows he had

received, that the wound was infected, he had not received medical treatment, these officers had refused him medical treatment which he had requested, that he had lost a great amount of blood, was weak, sick, in fear of his life——

(To which objection of the defendants, the State of Indiana interposed an objection for the reason he is incorporating a lot of stuff that is not in evidence at all.)

By the Court: Objection sustained, I think you are bringing in a lot of it that isn't in evidence at all.

Motion to Strike Testimony of Jesse McCarty Ruling Thereon

By Mr. Ging: I move, for the reason heretofore stated in this record that the oral testimony by this witness be [fol. 324] stricken from the record and the jury not be permitted to consider it as evidence against Paul Pierce for the reason that he had not, according to the testimony of this witness, been taken before a magistrate or judicial officer and advised as to his constitutional rights, that he had not been permitted to advise with or consult with an attorney or with any of his friends or relatives and that at all times——

(To which objection, the State of Indiana, by counsel, interposed an objection for the reason there is no evidence of that.)

By the Court: I think that is right.

By Mr. Ging: In any event, the statements were not voluntarily made by the defendant, Paul Pierce and also the same motion ask that the written instrument designated as State's Exhibit 6, 6A, 6B, 6C, 6D and 6E, be stricken from [fol. 325] the record and the jury instructed not to consider as any evidence the statement against the defendant, Paul Pierce.

By the Court: Motion overruled as to Paul Pierce and the jury is further instructed not to consider any of this evidence in any way as to Donald Joseph.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Now, Mr. Officer, when was the first time you ever saw these defendants?

A. At the State House in Indianapolis.

Q. You didn't know them, you had no acquaintance with them at all prior to that time?

A. No sir.

Q. You had learned prior to that time that Officer Quinnette had been shot by somebody, you knew that, did you?

A. I knew it that day, the day it happened, yes.

Q. How long had you been on the police force at that time?

[fol. 326] A. Well, pretty rough guess, I think about 15 years, I imagine.

Q. You were in what, serving in what capacity at that time?

A. At that time?

Q. Yes.

A. Detective Department.

Q. Who did you say went with you when you went to the State House that morning?

A. Lieutenant Pope, Tom Auls.

Q. That is Roy Pope?

A. Yes sir.

Q. And Tom Auls?

A. Yes sir.

Q. Those two men still alive?

A. Yes sir.

Q. Was there a man named Gish, didn't he go along too?

A. If he did, I don't remember it.

Q. He was a police officer at that time?

A. Yes sir.

Q. How long were you at the State House?

A. About 45 minutes, I imagine.

Q. Did you bring the defendant, Paul Pierce back to the State House or did they both come back with you?

A. Both came back to police headquarters from the State House, brought them both back.

Q. Did you make any investigation, or have any conversations with them at the State Police Headquarters?

[fol. 327] A. No sir, I did not.

Q. Then, as I understand you, these men were turned over to you by the Indiana State Police, turned over to the Indianapolis Police Department by the Indiana State Police, is that right?

A. That is right.

Q. And you took them then as members of the Indianapolis Police Department from the State House to police headquarters?

A. That is right.

Q. Now, don't you remember when they went down the steps of the State House that, do you remember any conversation that was had at that time?

A. No sir, I don't.

Q. You wouldn't remember that conversation?

A. I never had no conversation, I didn't hear anybody else.

Q. Did you overhear any conversation?

A. No sir, I did not.

Q. Did you hear Roy Pope, one of your police officers, say, why don't you run now you sons of bitches?

A. No sir, I did not hear it.

Q. You sure that didn't happen?

A. If it did, I didn't hear it.

Q. Were they handcuffed at that time?

A. That I couldn't say.

Q. They offered no resistance at that time, did they?

A. No sir.

[fol. 328] Q. On the trip to the State House around to police headquarters?

A. No sir.

Q. Were they taken in an automobile, police car or walk?

A. Automobile.

Q. What time of day was that would you say?

A. I imagine around 9:30, 10 o'clock, somewhere along there.

Q. And when you got to the police headquarters, then what was the first thing that was done with these men?

A. First thing, Lieutenant Pope turned Pierce over to me and John Giles.

Q. Was Pope your superior officer at that time?
A. Yes sir.
Q. Then these men were separated then?
A. Yes sir.
Q. You took Pierce and somebody else took Joseph in or took Joseph into another room?
A. Yes sir.
Q. Then who was with you at the time Pierce was turned over to you?
A. Lieutenant Pope, Tom Auls and John Gish.
Q. And at the time they were turned over to you at the State House, you considered they were under arrest?
A. They had been yes by the State Police.
Q. In the custody of the State Police at the time you received them and then you retained police custody from [fol. 329] that time on then?
A. Yes sir.
Q. Where did you take Mr. Pierce?
A. Police Headquarters.
Q. What did you do over in Detective Division? In any kind of a room?
A. Yes, small room there about 20 foot square.
Q. That investigating room?
A. Yes sir.
Q. Were there lights in that room?
A. Yes, windows on the south side.
Q. Strong lights?
A. Yes sir.
Q. Were these lights lighted?
A. Yes sir.
Q. Were they played upon or shown upon Mr. Pierce any time you were in the room?
A. Ceiling lights, no sir.
Q. You say that you got there about 9:30 or 10 o'clock?
A. Around 10 o'clock when we got back from the State House.
Q. What is the first thing you remember that happened after you got into that room?
A. Well, all three sat down, started talking about this shooting.
Q. Just the three of you?
A. That is right.

Q. Was Pope in there at any time?

[fol. 330] A. No sir. He was back in the back part with Joseph.

Q. Was a fellow named Gish, John Gish in there?

A. No sir, not at that time.

Q. Was he there at any time during the questioning?

A. After we come back from the hospital, yes he was there.

Q. Was Fred Simon in there?

A. I never seen him.

Q. You knew him, did you?

A. Yes sir.

Q. Wasn't he Chief of Detectives at that time?

A. He was, yes sir.

Q. Then you talked to Pierce about what happened?

A. Yes sir.

Q. Who did the questioning, you or John Giles?

A. Both of us asked him questions.

Q. Were there any other officers or relays of officers that questioned him?

A. No sir.

Q. How long did the questioning take?

A. About hour and a half, I imagine, hour maybe.

Q. And when, from the time the questioning started, was it until the writing that you have identified here was started?

A. About 10 minutes.

Q. Just 10 minutes you started to write?

A. About 10 minutes after we started talking to him.

Q. Were there any corrections or changes made in that [fol. 331] instrument?

A. Yes, I made one change.

Q. But it wasn't rewritten, the copy that you identified was the original copy, is that right?

A. The only change I made was in the date.

Q. The only copy that was made or ever made with regard to the facts that you say were placed in that exhibit, is that right?

A. Yes sir.

Q. Did Paul Pierce tell you, have you got everything in this exhibit, supposed statement that you identified of Paul

Pierce, everything in there that he told you and John Giles at that time?

A. Other than the numbers of the gun and the man's name, the colored doctor, he didn't know his name at that time.

Q. Did you interrogate him anything about the gun?

A. Yes, I asked him where he got it.

Q. But you didn't put that in the statement, did you?

A. Not in that statement, no sir, that was later on.

Q. Now, you say that there were some, there was a change made in this instrument?

A. One change, yes sir.

Q. And that is the only place where it is dated, isn't it, is on the first page?

A. That is right.

Q. That is where a change has been made?

[fol. 332] A. That is all.

Q. Are you sure that that was made the first day that Paul Pierce was in your custody?

A. Yes sir.

Q. Don't you know, as a matter of fact that he didn't make a statement the first day, that the statement was made the second day?

A. The statement was made as soon as we got back from the State House. Immediately after they were picked up by the State Police.

Q. He was anxious to make the statement?

A. The way he talked, he wanted to get it over with.

Q. And did he ask for any advice on the part of an attorney.

A. No sir.

Q. Never asked for an attorney?

A. No sir.

Q. Ask for the opportunity to talk to his family or friends about this thing?

A. No sir, he did not.

Q. Did he ask for any medical attention?

A. No sir.

Q. Make any exclamations of pain?

A. Didn't make any to me, no sir.

Q. Didn't tell you anything about a great loss of blood?

A. No sir.

Q. Inability to sleep?

A. No.

[fol. 333] Q. That he was fearful that his wound was infected?

(To which question and the answer sought to be elicited thereby, the State of Indiana by counsel, interposed an objection for the reason the question assumes facts that are not in evidence.)

By the Court: This is cross-examination, asking him if he said anything on that subject. Objection overruled.

A. No, he never complained to me at all about anything.

Q. He was in your custody all the time?

A. Yes sir, after we got back from the State House, yes.

Q. Did you examine his wound at that time?

A. No sir.

Q. Did you examine his ability to use his arms at that time?

A. No sir.

Q. You didn't know that his left arm was paralyzed at that time?

A. No sir. Not the way he acted, didn't seem like he was paralyzed to me.

Q. He didn't cause you any trouble there?

A. Oh no.

Q. Make any resistance while in the investigating room [fol. 334] there?

A. No sir.

Q. And you say that your entire investigation, all of the oral investigation and all of this writing was accomplished from 10 o'clock, hour and a half or 2 hours?

A. About an hour and a half I imagine, yes sir.

Q. All the investigation you made, oral conversations and questions that you and John Giles asked him, and got the whole picture and 6 pages of writing that you have identified, was all accomplished in an hour and a half.

A. About an hour and a half, yes sir.

Q. And it was all executed and signed by that time, was it?

A. Yes sir.

Q. At any time that morning and before this paper was

signed, had you taken Mr. Pierce before any magistrate or judicial officer of Marion County, Indiana?

A. No sir.

Q. During the time he was in your custody and prior to the time he signed this statement, he had not conferred with an attorney, had he?

A. Not that I know of, he didn't while I was there.

Q. He was in your custody all the time?

A. I don't know what he done over at the State House.

Q. From the time he was in your custody until long after this statement was signed, he did not, so far as you know, consult with an attorney?

A. No sir.

[fol. 335] Q. And neither was he, during the time he was in your custody and prior to the signing of the statement, was he permitted to see his family or friends?

A. Not while he was in my custody, no sir.

Q. How was he dressed on that occasion?

A. I can't remember.

Q. You know whether there was any blood on his clothes?

A. I never seen any blood on his clothes.

Q. Any blood on his shoes?

A. I never seen any blood at all.

Q. Pants, trousers?

A. No.

Q. You remember whether John Gish was in there?

A. Not during the first statement, no sir.

Q. You are not now a member of the Indianapolis Police Department?

A. No.

Q. When did you become disassociated?

A. September 5, 1942.

Q. And you were retired at that time?

A. I retired, yes sir.

Q. But you were on the police force about how many years?

A. 27.

Q. During that period of time, in your experience as a police officer, you investigated dozens, hundreds, perhaps thousands of different offenses, is that right?

A. Yes sir.

[fol. 336] Q. And you took hundreds, thousands perhaps

of written statements from persons suspected of violation of criminal law?

A. Yes sir.

Q. Now, your testimony here, you don't have any independent recollection of the facts or statements you have made here from the witness stand, do you?

A. I do now, yes.

Q. Before and after you examined this man, you interrogated hundreds, perhaps thousands of other people for other various offenses?

A. Yes sir.

Q. And the facts you have testified about were not, in other words, you couldn't testify to those facts because you wouldn't remember them unless you had had some, something had refreshed your memory, is that right?

A. After I was advised they were going to open this case again, I got my note book out and went over them.

Q You talked to the prosecuting officials, I mean, Mr. Fairchild and John Dailey, his Deputy?

A. Not as to what I was going to testify to, no.

Q. In preparation for this trial?

A. The only think I asked Mr. Fairchild, how I was going to get to Greenfield.

Q. The trial you had last November, you never advised with the Prosecuting Attorneys as to what your testimony [fol. 337] would be?

A. No sir.

Q. Never talked to them?

A. No.

Q. Talked to John Giles about it?

A. We went over it a little bit.

Q. How much did you go over it?

A. About being in the room there with me and talking to him, if he remembered this and remembered that and he said yes.

Q. You refreshed his recollection and he refreshed yours?

A. He has got the same stuff I got.

Q. You refreshed one anothers recollection, have you?

A. No sir.

Q. Talked to Tom Auls about your testimony?

A. No sir, never got a chance to talk to him.

Q. Talked to Roy Pope?

A. Some.

Q. You refreshed his recollection and he refreshed your recollection, is that it?

A. Not exactly, no.

Q. So, your testimony then, that you testified to from your oral examination, when you testified to those things you were not testifying from your own independent memory as to what occurred, were you?

A. Yes, after I looked over my notes and refreshed my memory, I did.

[fol. 338] Q. You had to have your memory refreshed as to all these details?

A. Yes sir.

Q. You had to advise and consult with your fellow officers, Mr. Pope and John Giles about what your testimony would be?

A. No sir.

Q. Didn't they in your conversations, in boning up as it were, on your testimony in this case, didn't they say anything that refreshed your recollection as to some of the things you have testified about here?

A. No sir.

Q. You now say, that after more than 18 years, that your oral testimony in this case is what you actually remember as to what took place?

A. After I looked at my note book, yes, it refreshed my memory.

Q. Prior to the time this statement was signed, which you say was within an hour and a half after you started to interrogate him, had Mr. Pierce asked for any water, any food or drink?

A. No sir, he did not.

Q. Was he offered any or given any?

A. Not by me he wasn't.

Q. Or by any other officer?

A. If they did, they didn't do it in my presence.

Q. You were the officer in charge of this investigation, [fol. 339] interrogation of Paul Pierce or was John Giles the chief?

A. John Giles was there with me all the time.

Q. Were you of equal rank or one over the other?

A. Both of equal rank.

Q. And was John Giles present all the time?

A. Yes sir.

Q. And neither one of you left the interrogation room from the time you started to interrogate him at 9:30 or 10 o'clock for the full hour and half until the statement was signed?

A. That is right.

Q. You were both present, so far as you know, no one else was in that room except you three?

A. That is right.

Q. Now, you have no recollection of any other persons coming in there or having any conferences or any acts on the part of any other officer at all?

A. They might have passed through but not stand there and stop, no.

Q. Where was this room, is it a private room?

A. No, it is not a private room.

Q. Would Detectives, on their way to and from their work or from whatever they were supposed to do, did they have to go through this room to get?

A. No, they didn't necessarily have to go through there.

Q. Would you now say that any of them did go through?

[fol. 340] A. Might have been a couple go through there, yes.

Q. John Gish go through?

A. No sir, never seen him.

Q. Roy Pope?

A. No sir, he was in the back of the building.

Q. He wasn't in there during this hour and a half at all was he?

A. No sir.

Q. All this occurred as you say on the 10th day of December, 1935?

A. Yes sir.

Q. Incorporated here?

A. Yes.

Q. You first dated it December 9, 1935?

A. Yes.

Q. What day of the week was that, do you remember?

A. Tuesday.

Q. Well, you say he didn't ask for any food or drink and you didn't give him any during that period of time?

A. He never asked for any, no sir.

Q. Anything said at all in that conversation about him wanting medical attention, maybe hospitalization?

A. Not while he was with us, no he didn't.

Q. Never mentioned needing anything?

A. No.

Q. And you observed, even though you knew he had been shot through the chest, you observed nothing wrong with [fol. 341] him at all?

A. No I did not.

Q. And made no investigation of his person to determine whether there was any need for any medication of hospitalization, did you?

A. No sir.

Q. Did you have anything to do with the interrogation of Donald Joseph?

A. No sir.

Q. That wasn't done in your presence at all then?

A. No sir.

Q. You think that you were in the interrogation room about 10 minutes when you started to write?

A. About that, yes.

Q. And all of this, as I understand you, except perhaps identification marks of the court reporter are in your handwriting?

A. Yes sir, outside of his name and John Giles name, yes sir.

Q. And this instrument bears your name and John Giles, each of your signatures, each of your handwriting, is that right?

A. Yes sir.

Q. And the other signature is Paul Irvine Pierce or Arvine Pierce, whatever it is.

A. That is right.

Q. You all three signed in the presence of each other?

[fol. 342] A. That is right, yes sir.

Q. Now, all of the information which you wrote down in your handwriting in this statement, that was read to the jury, was information given to you, as you say, by Paul Pierce and written down by you in the language in which he

used when he gave you the information or is some of this your own language?

A. Some of it in my own language, number of the gun and the doctor's name is my own language.

Q. Well now, he said to you, and I live at 1201 Park Avenue, Apartment 5 Hazel Dell, he told you that?

A. Yes sir.

Q. And he told you that in November of 1935 he and Donald Joseph went to 1201 Park Avenue and rented an apartment, he and the girl, Donald Joseph and the girl went there to rent an apartment and he told you about making arrangements to go to real silk hosiery mills and he went there and found Joseph and Grace Nowling?

A. That is right.

(And here at the hour of 12:00 noon Monday, February 1, 1954, court adjourned.)

(And now, at the hour of 1:30 P.M. Monday, February 1, 1954 court convened and the trial of this cause was resumed.)

[fol. 343] JESSE MCCARTY recalled to the witness stand and having heretofore been sworn, testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.

Q. How old are you?

A. 74.

Q. Then he told you about taking Grace Nowling's Ford coach on a trip to Cave City, Kentucky?

A. Yes sir.

Q. On the Friday before?

A. Yes sir.

Q. Came back the same day, did he?

A. Yes sir.

Q. That what he told you and he told you, did he, that on this morning of December, Saturday morning, December 7, that they drove up town, using Grace Nowling's Ford Coach, license No. M110, told you that, did he?

A. Yes sir.

Q. Did you have an independent recollection of what license number was on that car?

A. At that time?

Q. Now?

A. Not until I looked through my notes.

[fol. 344] Q. So, you are actually testifying from notes you made more than 18 years ago and what you know about the case?

A. Just 18 years ago.

Q. 18 years ago last December, wasn't it?

A. Yes sir.

Q. That is what you are testifying from, not your memory but from your notes, is that right?

A. Yes sir.

Q. Then, as I understand you, you didn't put anything in this written instrument but what Pierce told you?

A. Other than the gun numbers and the colored man's name.

Q. And he told you that they had the door locked in the apartment?

A. He did, yes sir.

Q. You have an independent recollection of him telling you that, do you?

A. When I looked at my notes I seen it, yes.

Q. You have an independent recollection of that before you looked at your notes?

A. No, I don't think I would, no.

Q. You say he says there was a knock on the door?

A. Yes sir.

Q. You remember that too, distinctly?

A. After I went through my notes it come to me.

Q. Then he told you, said these very words, I went to the door and unlocked the same, he said, gave you that language, [fol. 345] did he?

A. He did.

Q. And I opened the door and at this time I had a Smith and Weston 38 caliber nickel plated revolver in my right hand overcoat pocket?

A. That is what he told me.

Q. He knew the kind of a gun, did he?

A. He told me it was a 38 Smith and Weston.

Q. You had it, the police had the gun at that time, didn't they?

A. Not at the time he had it, no.

Q. I'm talking about when he made the statement.

A. We had the gun, yes.

Q. Now, he didn't tell you that he had, those weren't his exact words, Smith and Weston 38 caliber nickel plated revolver, those his exact words?

A. Yes sir.

Q. Exact words?

A. Yes sir.

Q. Well, he didn't tell you this, did he, which I was informed by Detectives John Giles and Jesse McCarty had No. 459690 on same, did he make that statement?

A. No, he didn't tell us that.

Q. You have got it in here, as a part of his statement, haven't you?

A. I told him the number of the gun and then put it down there, yes.

[fol. 346] Q. That isn't his?

A. He didn't say anything about the numbers of the gun.

Q. That is information you put into this statment, that is not his voluntary statement, is it?

A. Not to the number of the gun no.

Q. Then he said and when I opened the door and I saw three men standing in the doorway and I, Paul Pierce, said come in. Now, those are his exact words, are they?

A. Yes sir.

Q. And he just said these words exactly, and I saw three men standing in the doorway and I, Paul Pierce, said come in?

A. Yes sir.

Q. Those are his exact words?

A. Yes sir.

Q. None of them are your words?

A. No sir.

Q. He said, one of these three men said, we are from Detective Headquarters, that is all his language too, is it?

A. That is right.

Q. Tell you which man?

A. He says he didn't know which one said it.

Q. You didn't put that in the statement though, did you?

A. It is supposed to be in, he didn't know which one said it.

Q. But you didn't put it in even if it was supposed to be [fol. 347] in there?

A. Yes, I put it in.

Q. You put in there that he didn't know which one said that, did you?

A. Yes sir.

Q. That is in the statement here, is it?

A. Supposed to be there.

Q. Is it in there?

A. Yes.

Q. Is it?

A. Yes.

Q. All right, examine the statement and tell we where that is in the statement.

A. I meant to say he told me he didn't know who shot first.

Q. So, he did tell you some things then that you didn't put in the statement, is that right, on that occasion?

A. He didn't say anything about that to me.

Q. You were mistaken when you said it was in there, weren't you?

A. Yes sir, I am.

Q. Now, you didn't put in this statement everything that Paul Pierce told you, again you did put some things in there that he didn't tell you, that is true, isn't it?

A. Only two things that he didn't tell me that I put in there.

Q. And these words that I am reading now, Mr. McCarty, are his exact language as you copied it down when he said it? [fol. 348] A. Yes sir.

Q. All this is his exact language?

A. Outside of gun numbers and Doctor's name.

Q. Now, he said, one of the men said they wanted to talk to Mr. Coleman and then he used this language and both myself and Donald Joseph spoke up at the same time and said, I'm Mr. Coleman?

A. That is what he said.

Q. Those are his exact words?

A. Yes sir.

Q. Now, these are his exact words, then I, Paul Pierce, pulled the 38 caliber Smith and Weston revolver I had in my right overcoat pocket out, those are his exact words?

A. Yes sir.

Q. He said, I, Paul Pierce, pulled the 38 caliber revolver, those are his exact words?

A. That is right.

Q. Then he continues, and pointed this revolver at these two men who said they were from Detective Headquarters, he said that again too, didn't he?

A. Yes sir.

Q. He repeated the fact that they had said they were from Detective Headquarters?

A. He didn't repeat it, he said they were from Detective Headquarters.

Q. He said that up above, didn't he?

[fol. 349] A. Yes.

Q. Down here a little later on, on the same page, he said again that these two men from Detective Headquarters, those are his exact words, aren't they?

A. That is right.

Q. And told them to stick them up, these two men did not stick them up, those are his exact words?

A. That is right.

Q. I mean by saying stick them up that I demanded they stick their hands up, those are his exact words?

A. That is right.

Q. That is just the way he said it and you wrote it down at that time, just the way he made the statement?

A. Yes sir.

Q. Now, these are his words, after these two men, which I was informed by Detective John Giles and McCarty, were Orville Quinnette and Russell Chatham, members of the Indianapolis Police Department, ranking as Detective Sergeants, those are his exact words too, are they?

A. I informed him who they were.

Q. That language was your language and not his?

A. Yes sir.

Q. So, there is another instance where Paul Pierce's language is not used in this statement?

A. Yes. I informed them who they were.

Q. I say, this is your language, they didn't go into all

details about their rank in the Indianapolis Police Depart-
[fol. 350] ment, did they?

(No answer by witness.)

Q. Now, he told you that Orville Quinnette drawed, the way you have it here, his revolver?

A. That is what he said, yes.

Q. And we both started shooting but I do not know who shot first?

A. That is right.

Q. That is what he said?

A. Yes sir.

Q. You didn't make any change in his statements to you, in those two respects, did you?

A. No, not after he told me he didn't know who shot first.

Q. Are these his exact words, after I emptied my 38 caliber Smith and Weston revolver No. 45969 at Orville Quinnette, I ran back into a small bed room, those are his exact words?

A. Yes sir.

Q. He made this statement, after I emptied my, describe the gun, 38 Smith and Weston Revolver No. 45969, those are his exact words at that time?

A. That is right.

Q. And grabbed a brief case, took a 38 caliber Colts revolver out of this brief case, those are his exact words?

A. That is right.

Q. Then throwed the brief case out into the living room and I fired another shot and I think this shot hit Russell
[fol. 351] Chatham, those are his exact words?

A. Yes sir.

Q. Now, he told you too, did he, that they ran out the back way and then he says, we ran north to 13th Street and when we got to 13th Street we saw an automobile coming east on 13th Street, those are his exact words?

A. Yes sir.

Q. You wrote them down just as he told them to you?

A. Yes.

Q. And there was nothing that you supplied about that?

A. Not a thing, not a thing.

Q. Now then, he ran out to the car, then he says, quoting, and I put my Colts revolver, now he said that, did he?

A. Yes sir.

Q. My Colts revolver?

A. Yes sir.

Q. On this man who was a colored man, he stopped, that is just his exact words?

A. Yes.

Q. You didn't supply anything on that?

A. No sir.

Q. And Donald Joseph went around to the left side of the car and we made this man, who I was informed by Detectives John Giles and Jesse McCarty that this colored man was Doctor Edmond D. Moten, 1330 Kornel Avenue, now, that is some more of your testimony, isn't it?

A. I told him who the colored man was, yes.

[fol. 352] Q. Owner of the car which was a 1935 Dodge coupe, License 12779, Motor DW 27743, Serial No. 3780041?

A. I told him what the Motor number was.

Q. You put it all in here as part of the information he gave you?

A. That wasn't information he gave me, that was information we gave him.

Q. Then the next words here, Case No. 111489, where did you get that?

A. I got that from John Giles, he was assigned to that case, that particular case.

Q. That is some more supplying you did for this signed statement, is it?

A. Yes.

Q. Case No. 11489 assigned to Detectives John Giles and John Gish, now, that is some more information, some more of your testimony then?

A. Yes sir.

Q. Now, he told you and said, Donald Joseph took the wheel and while Donald Joseph was driving, I, Paul Pierce, shifted the gears, now that is his exact language again?

A. Yes sir.

Q. I, Paul Pierce, shifted the gears?

A. That is right.

Q. Then he said we then drove to 2918 School Street and passed the home of Grace Nowling, honked the horn on the car, those are his exact words?

[fol. 353] A. Yes sir.

Q. We did not stop, we then drove to Road No. 29, through Shelbyville, Indiana to Road 244, those are his exact words again?

A. Yes sir.

Q. That is nothing supplied by you?

A. No sir.

Q. Then he told you, did he that after they got to the Hedley house and we then took Sylvia Hedley's Chevrolet sedan, he doing the driving, those are his exact words, are they?

A. Yes.

Q. I doing the driving and took the Dodge coupe which we had taken away from Doctor Moten in Indianapolis, those are his exact words too?

A. Yes sir.

Q. And drove it, Donald Joseph doing the driving, to near St. Omer, Indiana where we left it, those are his exact words, aren't they?

A. That is right.

Q. Before we left Sylvia Hedley's home with the Dodge coupe, we took an instrument case and some bird seed, which was in the Dodge coupe, out and left same at Sylvia Hedley's home. Now, those are his exact words again, aren't they?

A. That is right. I didn't know any bird seed in the car until he told me.

[fol. 354] Q. We then drove back to the home of Sylvia Hedley in his Chevrolet sedan and stayed there until we were picked up by the Indiana State Police. Those are all his exact words, aren't they?

A. Yes sir.

Q. And he said this, too, did he, as a part of this statement, and I am making this statement with my own free will and accord knowing it will be either used for or against me in court and it is the truth and also want to state that I was not forced by being beat or whipped while making same, those are his exact words?

A. The first part of it wasn't but the last part is.

Q. What isn't?

A. Making this statement of his own free will and accord.

Q. He didn't say that to you?

A. I wrote that down and asked him about the last part.

Q. That part is what you supplied as a part of this statement?

A. The first part, yes.

Q. Something additional then and he also said, incorporated in here, knowing it will be either used for or against me in court, he made that statement?

A. I made that remark to him, yes.

Q. So, that is some more of the statement that you supplied?

A. And he said it was the truth.

Q. And it is the truth, he said that?

A. Yes sir.

[fol. 355] Q. You didn't supply that?

A. No sir.

Q. Then he said, and I also want to state that I was not forced by being beat or whipped while making same?

A. He did.

Q. Those are his exact words you wrote it down just as he said it and while he was saying it?

A. Yes sir.

Q. Did you do all the questioning?

A. No sir.

Q. Did John Giles do any of it?

A. Yes sir.

Q. But nobody else but you two?

A. That is all.

Q. And then you got Mr. Pierce to sign it?

A. That is right.

Q. And up to that time, the time Mr. Pierce put his signature on this exhibit which you have identified, there was never anything said by him about medical treatment or him needing hospitalization?

A. Not in my presence, no sir.

Q. But, immediately after he signed this statement, you police officers took him to the hospital?

A. That is right.

Q. And he got medical treatment?

A. Yes sir.

Q. But he didn't get it until after he signed the statement, [fol. 356] isn't that true?

A. He already had medical treatment.

Q. You don't know of any medical treatment he got, of your own knowledge, do you?

A. No, only what I heard.

Q. Any medical treatment that you think he got, you are testifying from hearsay about that?

A. That is right.

Q. He didn't ask for hospitalization or to be taken to the hospital at any time, did he?

A. Not to my knowledge, not to me.

Q. How soon after he signed this statement was he taken to the hospital?

(To which question and the answer sought to be elicited thereby, the State of Indiana, by counsel, interposed an objection for the reason he has been over this 3 or 4 times.)

By the Court: Ask it once more and don't repeat everything.

Q. How soon?

A. Immediately after he signed the statement.

Q. When he signed the statement and all the time he was being taken to the hospital, was at the hospital and returned from the hospital, he was in your custody, as police [fol. 357] officer, wasn't he?

A. Yes.

Q. Now then, sometime later, you took him to the hospital where Quinnette was, you said?

A. Yes sir.

Q. When was that now?

A. On December 13.

Q. That was 3 or 4 days after the statement was signed?

A. About two days and a half.

Q. And at that time he was in custody of you as a police officer, was he, when he was taken to the hospital?

A. I was one of them, yes sir.

Q. And he was taken into this hospital room where the wounded detective was, just walked in and walked out, is that it?

A. We took him in yes, he walked in with our help.

Q. Was he handcuffed at that time?

A. I can't recall, don't think he was.

Q. How many of you took him into the room?

A. Three.

Q. Three of you officers?

A. Yes sir.

Q. All friends of Mr. Quinnette?
A. Naturally, we were, yes sir.
Q. Fellow police officer?
A. Yes sir.
Q. Was Mr. Pierce attended by anybody?
[fol. 358] A. At that time?
Q. Was he advised by a lawyer before you took him on that trip?
A. Not to my knowledge, no.
Q. Had he been up to that time?
A. I don't know.
Q. Had he consulted any lawyer?
A. I don't know.
Q. Well, you, as a police officer, up to that time had never taken him before any judicial officer?
A. He never asked for any.
Q. I didn't ask you that.
A. No, I didn't take him.
Q. He didn't ask to be taken to Quinnette's room at the hospital either, did he?
A. No sir.
Q. Now, you had testified about another conversation you had sometime, I guess, when you were coming back from the hospital and he said he would have shot any cop that came in the apartment that day?
A. Yes sir.
Q. What else did he say on that day on that trip?
A. That was the only question I asked him. He was asked about a shooting in Anderson, Indiana by Lieutenant Pope.
Q. What hospital did you take him to?
A. City Hospital, called General Hospital now.
[fol. 359] Q. West side of Indianapolis?
A. Yes sir.
Q. That is how many miles from the police station?
A. Practically a mile, I imagine.
Q. There and back then, just that one statement is the only thing you remember that Pierce made?
A. That is the only question I asked him.
Q. Anybody else ask a question?
A. Lieutenant Pope asked him about shooting of a policeman in Anderson, Indiana.

Q. I'm asking you about this case?
A. No sir.
Q. Any other questions asked him about this case?
A. Just the one I asked him.
Q. And that is his answer?
A. That is right.
Q. That is the only words, so far as you know, that you remember that Mr. Pierce said on the trip out to the hospital and back to police headquarters, is that right?
A. That is all I know of yes.
Q. And you didn't remember that incident until you looked it up on your notes, is that right?
A. Yes, it come to me after I looked through my notes.
Q. You had that down in your notes?
A. Yes sir.
Q. Not an independent recollection at all?
A. No sir, I had to look over my notes like anybody else [fol. 360] would.

By Mr. Ging: That is all.

Redirect-examination.

(The said witness testified further as follows on redirect-examination in response to questions propounded by John Daily, one of the attorneys for the State of Indiana.)

Q. Officer, you hadn't followed Joseph and Pierce around from the time they came to Indianapolis, through the shooting and back to State Police Headquarters?
A. No sir.
Q. All the information that is in the statement, where did it come from?
A. Paul Pierce.
Q. You remember how Pierce looked back on the day you questioned him?
A. Yes, he looked all right to me.

By the Court: Strike out, he looked all right to me.

Q. I meant, do you remember his features back at that time?
A. Yes, like he is right now.

Q. I want you to look at a photograph marked State's Exhibit No. 2 and state whether or not that truly represents the appearance of Pierce so much as it shows as you remem-
[fol. 361] ber it back at that time?

A. That is right.

(And here, the State of Indiana by counsel, offered to introduce in evidence and exhibit to the jury, the picture above referred to which is marked for the purpose of identification as State's Exhibit No. 2.)

By Mr. Ging: No objection.

(And now, the State of Indiana, by counsel, introduced in evidence and exhibited to the jury, the picture above referred to which is marked for the purpose of identification as State's Exhibit No. 2, which exhibit so introduced and so exhibited to the jury was and is as follows:)

[fol. 362] STATE'S EXHIBIT No. 2

(Picture omitted in printing)

Q. By the way, do you remember the facial appearance of the defendant, Donald Joseph at that time?

A. Yes sir.

Q. Take a look here at a photograph marked State's Exhibit No. 3 and state whether or not that truly represents the appearance of the defendant, Donald Joseph?

A. It does.

Q. As you remember it at that time?

[fol. 363] (And here, the State of Indiana by counsel, offered to introduce in evidence and exhibit to the jury the picture above referred to which is marked for the purpose of identification as State's Exhibit No. 3.)

By Mr. Ging: No objection.

(And now, the State of Indiana, by counsel, introduced in evidence and exhibited to the jury the picture above referred to which is marked for the purpose of identification as State's Exhibit No. 3, which exhibit was and is as follows:)

[fol. 364] STATE'S EXHIBIT No. 3

(Picture omitted in printing)

Q. Mr. McCarty, on cross-examination, you were asked some questions, something about glaring lights at police headquarters, I believe you said there were some lights there, will you describe for the jury the lights of kind and brightness that were in the room where you questioned the defendent Pierce?

A. Well, on the south side of this room there is three windows, no shades on them and there is a ceiling light, that is all the light there is in that room.

Q. Any special light or just ordinary light?

[fols. 365-375] A. No sir, just ordinary illumination.

Q. So, there were no spot lights or anything like that?

A. No sir.

By Mr. Dailey: That is all.

(And further this witness saith not.)

[fol. 376] MATT LEACH called to the witness stand as a witness in behalf of the State, and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on examination in chief, such examination in chief being conducted by Frank H. Fairchild, Prosecuting Attorney, 19th Judicial Circuit, State of Indiana.

Q. State your name to the Court and Jury, please?

A. Matt Leach.

Q. Where do you live, Mr. Leach?

A. Gary, Indiana.

Q. And what is your present business or occupation?

[fol. 377] A. Nothing at present. I have a little project of my own, trying to do a little writing, so now I'm actually looking for a job, frankly speaking.

Q. How old are you sir?

A. 59.

Q. Directing your attention to the year 1935, what was your business or occupation that year?

A. I was Captain in charge of the Indiana State Police.

Q. For how long had you been on the Indiana State Police force in 1935?

A. Up to 1935?

Q. Up to then.

A. 2 years.

Q. For how long a period were you on the State Police force all together?

A. 5 years.

Q. You were a Captain in 1935 you said?

A. I was.

Q. Did I understand you to say you were in charge of Indianapolis State Police Headquarters?

A. No, in charge of operations of the entire department.

Q. Now, directing your attention more particularly to on or about December 10, of 1935, you may state whether or not you saw the defendants, Donald Joseph and Paul Pierce during the course of that day?

A. I did.

Q. What were the circumstances under which you first [fol. 378] saw them that day?

A. They were arrested by members of, my, department and brought into the State——

By Mr. Ging: I don't believe that is an answer to the question.

By the Court: That may remain in, go on, no dispute, I guess that they were arrested.

A. They were brought into the State Capitol in my private office.

Q. About what time on December 10th of 1935 would you say, approximately?

A. Between 7 and 8 A.M.

Q. 7 and 8 o'clock in the morning?

A. Yes.

Q. At the time you first saw them, did you observe their condition or appearance?

A. I did.

Q. Did you have a conversation with them at that time?

A. I did.

Q. Will you please relate what that was?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, interposed an objection for the reason it hasn't yet been shown that this witnes can [fol. 379] testify about a conversation, there is no showing that he had been advised as to his constitutional rights by any judicial officer or that he had been permitted to talk to an attorney, been advised by an attorney or talk to or communicate with any of his relatives or friends and until that is shown, I think we will object on the ground that it is not a voluntary statement but was made before these men had any knowledge or any information or been advised by any officer of their rights.)

By the Court: Objection overruled.

A. The first conversation when they were brought in, I said, I see you are hurt. Says, yes we are. They both had bandaged arms. Joseph, I think, his arm was up here and Pierce was dressed and his arm in what is known as a sling or something like that.

Q. What did you do, if anything?

A. I said, badly hurt? He said, yes, pretty bad, said we were shot up. And with that, as a matter of standing [fol. 380] policy, I called Doctor Bird and asked him if he could come to the State House and dress two men that were wounded.

Q. Who was Doctor Bird at that time?

A. Charles Bird was the Indiana State Police Doctor.

Q. Doctor for the Indiana State Police?

A. Yes, consulting doctor for our department.

Q. You may state whether or not Doctor Bird did some to your office?

A. He did come down.

Q. What did he do?

A. Meanwhile I called the City Police and notified them of it and Lieutenant Pope arrived in the meanwhile, Doctor Bird came in and I pointed the men out, I said here are the men here, you better check them closely.

Q. What did he do, if anything?

A. He did, he dressed Joseph and Pierce and a Lieutenant Pope sitting in an ante room out there, he wanted to come in. I denied him the privilege of talking to them until I was assured that they had received medical aid.

Q. Did you see Doctor Bird while he was treating them?
A. I was there with him.
Q. What he did to them?
A. I was with him. Just myself and Doctor Bird and Joseph and Pierce, I wouldn't allow anyone else in there until I got final report from Doctor Bird.
[fol. 381] Q. Tell how much time he spent with them dressing their wounds?
A. Doctor Bird was there, I would say an hour. As he dressed the men and treated them and the conversation went on, I checked closely with him and at the conclusion of Doctor Bird's dressing and treatment, I asked him then, I said how are they? He said they are all right, I said, can I talk with them? He said, you can. I said, what is the charge, Doctor? He said, well, said, let's see, I been here quite a while, he said, will be $10.00. Like in every instance, they were searched too, of course, and between them they had approximately, now could be off a little bit, approximately $85.00, I believe it was. As is the custom——

By Mr. Ging: I don't believe they asked him what the custom is.
By the Court: Strike that out.

A. Joseph and Pierce were advised they should pay their own doctor bill.

By the Court: Just what was said to them.

A. I told Joseph and Pierce both that they should pay their own bill if they can and with that, with their approval, Doctor Bird was paid $10.00 from their money. And we relaxed and loafed a while.
Q. Was it in the presence of the defendants, Joseph and [fol. 382] Pierce, Mr. Leach, that the doctor told you that they were all right and you could talk with them?
A. Yes sir, they were there. While they were dressing Pierce, he said, when can I get out on bond. I said, you will have to arrange that with the Indianapolis Police, when you are released to them. Then a conversation actually went on, smoked a cigarette, the first question, I believe, that I asked, I might say I did ask, I said, why why didn't you shoot it out with us. Joseph said, I'll speak for both of us, he said, we looked out, we were outnumbered and that is the reason we didn't.

Q. Now, did you have a conversation with them concerning the shooting of Quinnette?

A. And a second question, I said, what prompted you to, let me get this right, then I said, well, what happened at the apartment. Well, he said, we were caught in a trap and we were trying to make a get-away and he said, suddenly a shooting or match went on. He said, do you blame us? I said, no, I don't blame you for trying to get away, I do blame you for trying to shoot your way out. Then, they unfolded the story to me, unsolicited and gave me the highlights.

(Thereupon, the defendants, by counsel, separately and severally moved the court to strike that from the record.)

[fol. 383] By the Court: Strike out "unfolded the story."

A. I said, I repeat again, I don't blame you for trying to make a get-away but I do blame you for shooting your way out. I said, did you know who they were? They said yes, because we——

By Mr. Ging: Wait, unless he testifies to which one said it.

By the Court: Can you tell who said it?

A. Joseph said, yes because we had spotted them in our neighborhood and we talked it over and thought we had better get out, so we went up to the apartment to check out. Pierce said then, that he thought that they were too slow getting out, meanwhile two of the same men that they had spotted at, cruising around in a police car, barged in. I said, what you mean by barged in? Knocked at the door and we let them in, asked for Coleman, I believe, Coolman or Coleman, Joseph said then that a shooting started, everybody was shooting at everybody else, then everybody was shooting at everybody else, then we left. In other words, give me the highlights. Said, we left and went to Hedley's farm, so, he said, here we are.

Q. These defendants you are speaking of are these the ones in the court room today, Mr. Leach?

[fol. 384] Q. And following this conversation that you had with the defendants then at State Police Headquarters, what did you do with them then?

A. I called a Lieutenant Pope into the office, I said, here they are and you won't have any trouble with them because

they have readily told me the story and you can have them and here are the guns, 3 guns, German Mack 38, 2 38 Colts, I believe it was, and I turned an envelope, money, guns over to Lieutenant Pope and that is the last of it.

Q. That is the last you had to do with it?

A. Yes.

Q. All this you testified to Captain Leach, took place in Marion County, Indiana in 1935?

A. Yes sir.

By Mr. Fairchild: You may cross-examine.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Your memory isn't too good about the circumstances surrounding this, is it, Mr. Leach?

[fol. 385] A. Yes sir.

Q. You have talked to the Prosecution about your testimony in this case since you have been here?

A. I talked with both prosecutors.

Q. You have talked to other police officers, have you, about the case?

A. I talked to Goodman for a little while.

Q. Who?

A. Goodman is the Goodman here, for a little while when I was subpoened.

Q. Now, you think that these men were brought to your office between 7 and 8 o'clock on the morning of what day was it now?

A. December 10th or 11th, 10th, I believe, either 10th or 11th. Certain things stand out, a date like that is, 10th.

Q. Now, you could see that they were wounded?

A. Yes sir.

Q. And in pain?

A. Yes sir.

Q. Could you tell whether they had lost blood?

A. I would imagine so, I couldn't tell, I imagine anybody that has been shot is bound to lose some blood.

Q. From the nature and extent of the wounds that you saw there would be considerable loss of blood?

A. Not necessarily, not from a gun shot, a pistol shot, not necessarily. Sometimes you don't even lose an ounce, it all [fol. 386] depends.

Q. Did you see any blood on their clothing, on their shoes?

A. They were bandaged when they arrived, I didn't see any blood.

Q. Was the bandage that you saw bloody, soaked with blood?

A. No it wasn't.

Q. They had been injured about 3 days before you think, 2½ or 3 days?

A. 2 or 3 days.

Q. Could you tell whether they had fever?

A. Well, since we have handled similar cases, many of them in my experience, yet I don't rely on my judgment in those things. I did ask Doctor Bird and I relied on his judgment, and based on their cockiness, I don't think they had much fever, especially Joseph.

(Thereupon, the defendants, by counsel, moved the court to strike the last answer from the record for the reason I didn't ask him that.)

By the Court: Motion overruled.

Q. You didn't talk to the Doctor about whether they had fever or not?

A. I certainly did. I covered the usual conversation with a doctor, asked him whether——

Q. Was there a temperature taken at the time they were [fol. 387] in your office by the doctor?

A. Certainly was.

Q. What were their temperatures?

A. That I don't know.

Q. You are sure their temperatures were taken?

A. Positive because that little stick, that little glass proposition that they carry, it was taken.

Q. And Doctor Bird, you say, was in your office, I believe, three quarters of an hour?

A. Could have been little longer than that.

Q. And he examined each one of them?

A. Each one of them.

Q. They weren't taken to the hospital were they at that time?

A. No by our department.

Q. Not by the State Police or doctor Bird?

A. That is correct.

Q. Was he a general practitioner?

A. Yes sir.

Q. And was subject to call by the Indianapolis Police Department or State Police Department at that time?

A. We could call, we could rely on him to answer our calls because he was our consulting physician.

Q. Now, he said that, I believe you say that Joseph said that everybody was shooting at everybody else in this apartment?

A. In those words, shooting match.

[fol. 388] Q. Did Joseph say that he was shooting too?

A. Joseph, since you ask the question, said that he hit, was it Chatham, he said I just punched him and he added by saying, I can lick him any day of his life.

Q. What did Joseph say about him shooting, engaging in the shooting himself?

A. He said he had shot but that Pierce shot at Quinnette, that Pierce emptied his gun at Quinnette.

Q. Well, did he say anything about Quinnette emptying his gun too?

A. He did not.

Q. Did he say anything about Chatham shooting at him?

A. He did.

Q. Now, let's get back to whether Joseph said anything about any shooting that he did on that occasion, did he say that he engaged in the shooting along with the other three men?

A. Joseph did say that he shot but didn't tell me where. I didn't question him any further, he said that he shot but, of course, made it clear to me that Pierce did most of the shooting.

Q. Pierce did most of the shooting?

A. That is right.

Q. Joseph said that he did some of the shooting?

A. That is correct.

Q. Now, you say that when the detectives came from police headquarters that they had seventy or eighty dollars

[fol. 389] money between them that had been taken from them?

A. I'm trying to recollect, they had, I could be off $10 or $15 now but I remember that there was, I believe $50 or $60, could be $40. It was over $50 anyhow.

Q. There was three guns, you say?

A. 3 guns, I believe it was.

Q. Where did you get the guns?

A. Our State Police arrested them and during the raid they were found in Hedley's home.

Q. Oh, in Hedley's home.

A. They were found in the Hedley home where they were under the bed, I think.

Q. They were not, you don't mean to infer that they were taken off of the persons of these men, do you?

A. They were practically undressed when we came in on them so they couldn't have them on them.

Q. You were at the scene of the arrest?

A. I was not.

Q. Then you don't know of your own knowledge what did happen down at the scene of the accident?

A. I certainly do because my men reported to me in detail.

Q. I am talking about personal knowledge.

A. I was not there personally.

Q. If some guns were turned over to you by your men, you know nothing about the ownership of those guns or where they were found, of your own knowledge, do you?

A. Well I certainly do, they were picked up in a raid.

[fol. 390] Q. Of your own knowledge, do you know that?

A. Just as much knowledge I could have. My men brought them in and said these are their guns.

Q. Were you there?

A. On the scene, I was not.

Q. Did you see these men have possession of these guns?

A. I did not.

Q. They were the guns that were supposedly found in the Hedley home and brought to State Police Headquarters, is that right?

A. That is true.

Q. You never saw these defendants in possession of those guns or never saw these defendants use either one of them, did you?

A. I did not.

ROBERT K. GORMAN called to the witness stand as a witness in behalf of the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as fol-
[fol. 391] lows on examination in chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. State your name to the Court and Jury.
A. Robert K. Gorman.
Q. Where do you live?
A. Madison, Indiana.
Q. Occupation?
A. Officer of Indiana State Police.
Q. How long have you been so?
A. September 1, 1935.
Q. On or about the early morning of the 10th of December, 1935, did you have occasion to go to the Headley farm?
A. I did.
Q. Where is that located?
A. It is south and west of Rushville, near Milroy.
Q. Did you go as a State Police Officer?
A. I did.
Q. Who went with you?
A. Well, there was quite a few. Sergeant, our present Superintendent, Price Cox, Sergeant Moore, Elmer Hollenback, an officer by the name of Richardson, Sergeant Richardson, Detective Spannith.
Q. You go there for a particular purpose?
A. We did.
[fol. 392] Q. What was that?
A. We had information that two fugitives were at the Hedley home that was wanted very badly.
Q. Describe how you approached the Hedley's place, what it looked like, what you did there.
A. It was a very moonlight night, and I would say it was almost as clear as day and it was late, after midnight, around 2 o'clock as I recall it and quite a distance down the road all cars turned off their lights and when we got to the Hedley home the motors were cut and we coasted in and

the house, small, house sets back, was immediately surrounded.

Q. And then what happened.

A. We, myself and Detective or Captain Cox and Detective Spannith was assigned to the detail of the front door, we immediately proceeded to the front door where we knocked upon the door and informed them that it was police officers and there was no response. We did hear some scuffling around in the house, and we were there quite, seemed quite some time and finally Hedley came out on the porch and went back in the house. And, at that time, Sergeant Moore yelled out, watch out, somebody's got a gun, he was looking through a side window and was looking across through the room and after quite a length of time, I believe it was Pierce who came out first and then Joseph, Pierce was begging, give us a break, give us a break.

[fol. 393] By the Court: Strike out "begging". Just tell what was said.

A. Pierce said, fellows give us a break, give us a break.

Q. The two men that came out that you described as Joseph and Pierce, are they in court here?

A. Yes.

Q. Point them out.

A. The two individuals right here.

Q. Then what happened or was there any conversation then?

A. Pierce's arm was in a sling and I know I grabbed that arm, I thought maybe there would be a gun hid in it.

By the Court: Strike out what he thought.

A. I searched Pierce.

Q. Did you find anything?

A. No. We took them to the car and I rode in the car which took them back to Rushville Post at that time. There was a Post there at Rushville.

Q. During the ride back to the Rushville Post, was there any conversation with the defendants?

A. Pierce and Joseph both talked very freely.

(Thereupon, the defendants, by counsel, moved the court to strike the last answer from the record.)

By the Court: Strike that out. Say whether there was any [fol. 394] conversation, yes or no.

A. Yes there was.

Q. All right now, tell what this conversation was, as best you remember, who said what, in other words.

A. They were both talking very freely.

By the Court: That doesn't tell much. If you know what each one said, tell it.

A. Pierce stated, was laughing about what a commotion they had raised over the shooting, stated how dumn the cops were to come to the——

(Thereupon, the defendants, by counsel, moved the court to strike the last answer from the record.)

By the Court: Motion overruled.

A. Pierce stated how dumn the cops were, they came to the door with their hands down and nothing in their hands and he laughed talking about it, and Pierce stated that when he was shot, they started shooting immediately and the shot from the officer turned him around twice and knocked the gun out of his hands and Joseph was wrestling in the hallway with the other Detective. Joseph carried Pierce down out the back where they commandeered a car and they were laughing how dumn the doctor was when they had the gun on him begging for parrot seed.

Q. Say anything else about parrot seed?

[fol. 395] A. Don't recall that there was.

Q. Anything said about a medicine chest or surgical bag or anything?

A. Later he stated that they dressed their wounds from that bag.

Q. Well now, go ahead and tell whatever other conversation there was, if any.

A. Stated that Joseph drove the car, one handed, Pierce shifted gears and they went down Indiana 29 and they stopped at Hedley's home where they secured Hedley's car and took the doctor's car out and ditched it. They stated that they dressed their own wounds. Pierce stated he would like to know who the S. B. was that tipped them off because when he got out, he had better start fleeing, he was going to get him.

Q. Is there any other conversation now?

A. That is all I recall.

Q. Now, did you see any guns there at the time of the arrest of Pierce and Joseph?

A. There was some guns taken. I saw the guns but as far as to identify them, I never had them in my hand but there was some guns taken at the house.

Q. I guess you subsequently arrived at the Rushville Post?

A. We did.

Q. Then, what, if anything, occurred?

A. They were taken to Indianapolis, I did not accompany them on that trip.

[fol. 396] Q. Did they stay any time at the Rushville Post?

A. There was a short stay there, period of time, it wasn't long. I believe the call was placed to Indianapolis from there.

Q. And this took place where, in Rush County?

A. Rush County.

Q. State of Indiana?

A. State of Indiana.

By Mr. Daily: You may cross-examine.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. How many State Police Officers accompanied you that night?

A. There was three car loads, I would say there was 10 or 12 of us.

Q. You named five, exclusive of yourself, you remember anybody else besides Cox, Sergeant Moore, Elmer Hollenback and Richardson and Spannith?

A. I believe Kermit Lewis, that is all I recall at the present time.

[fol. 397] Q. You had never seen these men before?

A. No sir.

Q. And you got to the Hedley home, I believe you said about 2 o'clock in the morning?

A. It was late.

Q. And were the people in bed living there?

A. It was dark, there was a lamp burning as I recall there was a lamp burning which was later blown out.

Q. Did you see anybody in bed or activity around the house when you went up there the first time?

A. No, I did not.

Q. And finally, the owner or the occupant of the house, Mr. Hedley came to the door?

A. That is right.

Q. In answer to your knock, after due time, he came to the door, how was he dressed when he came to the door, do you remember?

A. I believe he just had on a pair of bib overalls.

Q. Did he say anything, whether he had been in bed or not?

A. No.

Q. Now, the first thing that you did when you got up to the door, was to announce that you were police officers?

A. That is right.

Q. And while you were there, was there a single shot fired?

A. No.

Q. By anybody?

[fol. 398] A. No.

Q. Were you in the house?

A. No, I never did go inside the house.

Q. Then, after some little time, you say, I believe you said Mr. Hedley went back into the house?

A. Yes and as I recall, his wife came out the back door.

Q. And you and these other two officers who were detailed to the front of the house, were you still up on the porch, or where were you?

A. No. When Sergeant Moore said, look out, he has a gun, we moved off the porch. I moved around the corner of the house and the other two moved back a little.

Q. Did you see anybody with a gun at that time?

A. No I didn't.

Q. In a very few minutes then, Mr. Pierce and Joseph came out on the porch?

A. That is right.

Q. Which one came first?

A. Pierce.

Q. And how were they dressed?

A. In just their undercloths.

Q. And was any opportunity given them to dress at that time?

A. As I recall, I believe we put blankets around them in the car.

Q. Isn't it a fact that their clothing was brought out and they dressed in the State Police car?

[fol. 399] A. Could have been.

Q. When they first came out into that December night, they were in their underwear?

A. That is right.

Q. Either one of them have a gun?

A. No.

Q. And you say Pierce's arm was in a sling, which arm, do you remember?

A. Left arm.

Q. And you searched them when they came out on the porch?

A. Yes, I grabbed that arm.

Q. At that time, they offered no resistance, did they?

A. No, they were begging for mercy.

Q. No, I didn't ask you that. They offered no resistance, you had no trouble?

A. That is right.

Q. No physical effort performed by anybody to arrest them, take them into custody after you got there?

A. I don't believe I got that.

Q. I say, no physical violance necessary to put them under arrest?

A. No.

Q. Did you search both of these men?

A. No.

Q. Which one did you search?

A. Pierce, it so happened I was standing where he came out.

Q. You didn't find anything on him at all?

[fol. 400] A. No.

Q. Do you remember whether they were permitted to, whether——

By Mr. Ging: Withdraw that.

Q. Did they have any clothing on their arm when they came out or do you remember?

A. Not that I recall.

Q. Well, do you remember whether any clothing was brought out of the house before you left there for them to use?

A. I can't say definitely where they were dressed.

Q. Well, did any of your officers go into the house at any time?

A. Yes, some officers went into the house.

Q. Do you remember whether they brought out their clothing?

A. I said I don't remember where they were dressed.

Q. But when they came out, they each had on their underwear, is that right?

A. That is right.

Q. Pajamas?

A. No, it was underwear, shorts.

Q. At the time you and the other officers gathered there in, 10 or 12 of you or whatever you said were there, did any officer have a warrant for the arrest of these men?

A. That I could not say.

Q. Did you hear a warrant read to these men or either of them or both of them at the Hedley home, at the time they were taken into custody?

(To which question and the answer sought to be elicited [fol. 401] thereby, the State of Indiana, by counsel interposed an objection for the reason it is not material, they were searching for felons and it is not necessary.)

By the Court: That is a question of law, what happened, they have a right to show.

Q. Did you have, you or any of the other officers who accompanied you on that occasion have any search warrant authorizing the search of the Hedley home?

A. I can't state for the others, I did not.

Q. You didn't see any, there was no search warrant served or read to Mr. Hedley or any of the other occupants of the home, in your presence was there?

A. Not to my knowledge.

Q. You weren't in the house, I believe?

A. No I was not in the house.

Q. But there were some guns picked up or gotten in the house there by some of the officers?

A. Yes.

Q. How many?

A. That I can't say, I don't know the exact number.

Q. More than one?

A. As I recall, there was a revolver and I don't know whether a rifle was taken at that time or not.

[fol. 402] Q. Shotguns?

A. I don't know how many. I know there was a revolver taken.

Q. You remember whether a rifle or some rifles and a shot gun or so taken too?

A. No, I don't know of my own knowledge.

Q. Do you know where those guns, that were taken, where they are now?

A. No, I do not.

Q. Now, I believe you said that you had some little conversation with them about what happened in the apartment and that Pierce said they started shooting, the shooting started immediately as soon as the officers got up there.

A. He was laughing, how dumb cops were.

Q. I didn't ask if he was laughing, what did he say?

A. How dumb the cops were to come up to the apartment with nothing in their hands, hands down at their sides.

Q. What did he say about when the shooting started?

A. Starting letting him have it, when he was hit, the force of the bullet turned him around twice and knocked him loose with his gun and Joseph was wrestling out in the hallway with the other detective.

Q. Did he say where the shooting occurred?

A. In the apartment.

Q. And didn't he say that the altercation between Chatham and Joseph was largely on the davenport inside the house?

A. I believe that is right, in the hallway too.

Q. The shooting between Chatham and Pierce was done [fol. 403] while they were on the davenport scuffling, isn't that what he said then?

A. I believe that is right. He also stated that Joseph and the other detective was down in the hallway, Joseph was

down in the hallway at one time, wrestling down in the hallway.

Q. But the shooting that was done as between Joseph and Chatham was done when they were on the davenport, isn't that what they said at that time?

A. I recall something about a davenport but the exact words I don't remember.

Q. Have you ever been to that apartment?

A. No sir.

Q. Now, that has been more than 18 years ago since you heard that conversation?

A. That is right.

Q. Did you make any notes at the time as to what was said?

A. Well, I have talked it over with the Prosecutor.

Q. You have talked to the Prosecutors here and the other police officers, State Police Officers who were with you at that time about what happened there since then?

A. I have talked to the Prosecutor.

Q. Talked to any other State Police Officers and you have discussed this at the other trial and at this trial, what your testimony would be with the Prosecuting Officials?

A. Certainly.

[fol. 404] Q. And that conversation you had with the prosecuting attorneys tended to refresh your recollection as to what happened, is that right?

A. Well, what really stuck in my mind was the arrogant, cold-blooded manner in which these——

(Thereupon, the defendants, by counsel, separately and severally moved the court to have the last answer stricken from the record.)

By the Court: Strike it out.

Q. Do you know whether they were in any pain at that time or not?

A. They probably were in some pain but from observing them and their actions, I would, in my own opinion, they were not in too severe pain.

Q. Was anything said about pain or about a loss of blood or anything of that sort by them?

A. No, they stated that they bandaged theirselves from the doctor's kit there at the Hedley home.

Q. Now, you say that they talked about the doctor a little bit and they also said that Joseph drove the car, drove the doctor's car away when they commandered it, is that right?

A. That is right, drove with one hand and Pierce shifted gears.

Q. Joseph drove and Pierce shifted gears?

[fol. 405] A. That is right.

Q. Now, at no time during the time that you had these men in your custody or before they were arrested, did you see them actually in possession of a gun or guns, that is, on their person, did you?

A. No.

By Mr. Ging: That is all.

Redirect-examination.

(The said witness testified further as follows on redirect-examination in response to questions propounded by John Dailey, one of the attorneys for the State of Indiana.)

Q. How would you describe the manner in which these two defendants acted while they were being transported from the Hedley home to Rushville?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection for the reason it isn't competent and he has gone all over that once.)

By the Court: Some things you can't describe. Objection [fol. 406] overruled.

By Mr. Ging: Any answer that this witness would make to that question would be a conclusion and not a fact.

By the Court: Objection overruled.

A. What struck me so forcefully was their cold-blooded arrogant manner in which they discussed the shooting, shooting a police officer as though no more than an average citizen thinks of shooting a mad dog.

(Thereupon, the defendants, by counsel, separately and severally moved the court to strike out the last answer of the witness.)

By the Court: Strike it all out.

Q. As to whether they were sad and depressed or happy, can you describe that?

A. They didn't seem to be too worried and they carried on a conversation quite freely, talked about it and joked about all the trouble that was caused over the shooting.

By Mr. Daily: That is all.

Recross-examination.

(The said witness testified further as follows on recross-[fol. 407] examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. How long were you in their company?

A. From the time at the house until we reached the post, I'd say a period of about an hour.

Q. How far is it from the home, from the Hedley home to the Rushville Post?

A. Well, I'd say around 12, 15 mile, in that neighborhood.

Q. Were they transferred from one car to another before they started on the trip from Rushville to Indianapolis?

A. That I don't know.

Q. Were they taken out of the cars or were they taken into the post?

A. They were taken into the post and then taken to Indianapolis, as I recall it.

Roy Pope called to the witness stand as a witness in behalf of the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating [fol. 408] to said above entitled cause, testified as follows on Examination in Chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. I believe you were in court the first day when witnesses were sworn?

A. Yes sir.

Q. Your name please?

A. Roy Pope.

Q. Where do you live?
A. 117 North Wallace Street, Indianapolis, Indiana.
Q. What is your occupation?
A. Retired police officer.
Q. What period of years were you a police officer?
A. Well, I was a police officer from 1919 until I retired in 1945.
Q. That is a police officer of the city of Indianapolis?
A. Yes sir.
Q. Marion County, Indiana?
A. Yes sir.
Q. Are you acquainted with the defendants?
A. Yes sir.
Q. You have occasion to see these defendants on the 10th of December, 1935?
A. I did.
Q. Where did you first see them?
[fol. 409] A. First saw them at State Police Headquarters about 9 o'clock on the morning of the 10th. They were being held by the State Police and turned over to us by the State Police.
Q. Who is us?
A. Detective Sergeant Auls and McCarty.
Q. What did you do with them?
A. Took them to Detective Headquarters.
Q. Took them in a car?
A. That is right.
Q. Whether they were handcuffed or not?
A. I couldn't say positively whether handcuffed or not, I'm not sure about it.
Q. Did you have any conversation with them on the way to police headquarters?
A. Yes, they talked about the case and said they were in——

By the Court: They just asked whether you had a conversation.

A. Yes sir.
Q. Where did this take place, in the car on the way to headquarters?
A. In the car and we also talked to them in the Detective Headquarters.

Q. Will you relate that conversation the best you can?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel separately and severally [fol. 410] interposed an objection unless it is first shown, and we want to establish that fact, first shown that these defendants were, constitutional rights were not violated and that they were advised as to what their constitutional rights were, whether they were taken before a magistrate, whether it was a voluntary confession, voluntary statement, will object to anything on the part of this witness until those facts are established.)

By the Court: Objection overruled.

Q. Now, relate the substance of the conversation telling who said what?

A. Well, on the way over and at Detective Headquarters before the statement was taken and reduced to writing, they said that they was in the apartment at 1201 Park Avenue and Pierce admitted the shooting.

By Mr. Ging: Before this witness is permitted to testify I'd like to put on these men and show what was done, all the [fol. 411] facts.

By the Court: You can raise that with a preliminary question.

By Mr. Ging: Did you and the other officers that received these men, did you, Mr. Pope, from State Police Headquarters, in the State House?

By the Witness: That is right.

By Mr. Ging: And were they under arrest at that time?

By the Witness: Under arrest by the State Police.

By Mr. Ging: And when you took over they were under arrest and in your custody as police officers?

By the Witness: Yes, they were arrested for automobile banditry.

By the Court: Just answer the question, Mr. Pope.

By Mr. Ging: During the time that you had custody of them and before you talked to them or attempted to get any statement from them, did you take them before any magis- [fol. 412] trate or judicial officer where they could be advised as to their constitutional rights?

By the Witness: No sir.

By Mr. Ging: Had they, during the time they were in your custody as a police officer, had they been permitted to consult with an attorney or advised with any of their friends or relatives?

By the Witness: No.

By Mr. Ging: At all times involved herein these two men were under arrest and in your custody and control as police officers?

By the Witness: Yes, we put them under arrest.

By Mr. Ging: Did you examine them physically?

By the Witness: No, they just told me that they had medical treatment.

By Mr. Ging: You don't know anything about their physical condition, how much blood they had lost or anything else?

[fol. 413] By the Witness: No, I couldn't tell you.

By Mr. Ging: Did they ask for permission to see an attorney?

By the Witness: No, they never did.

By Mr. Ging: Wasn't there a card with a name of Ernest Owens handed to you and you were asked to get in touch with him?

By the Witness: No sir.

By Mr. Ging: And didn't you throw that card on the floor and say, you don't need a lawyer?

By the Witness: No I didn't.

(Thereupon, the defendants, by counsel, separately and severally renewed their objection because there has been no showing that these men were advised as to their constitutional rights.)

By the Court: Objection overruled.

Q. Now, will you relate the substance of this conversation that took place on the way to police headquarters when you first arrived there, trying to tell as best you can who said what?

[fol. 414] A. Well Pierce and Joseph both stated that they had been in the apartment at Apartment 5 at 1201 Park Avenue, the Hazel Dell and they talked about the shooting and we talked a while over there, possibly five minutes and then Detective McCarty took Paul Pierce and I took Donald Joseph and I took the statement from Donald Joseph.

Q. Anybody with you when you took the statement?

A. Yes, Detective Auls was with me.

Q. You know where Detective Auls lives today?

A. He is in Florida, Hollywood, Florida.

Q. When you took this statement, did you reduce it to writing?

A. I did.

Q. After it was reduced to writing, what did you do with it, if anything?

A. Well, it was reduced to writing and Donald Joseph signed it and it was put in our file.

Q. As to whether or not it was read to him before he signed it?

A. It was read to him, yes sir.

Q. I want you now to examine what has been designated as State's Exhibit 4, 4A, 4B, 4C and 4D and state whether or not that is the statement you refer to in your testimony.

A. Yes, this is the statement that we took from Donald Joseph.

[fol. 415] Yes, this is the statement that we took from Donald Joseph.

Q. Now, directing your attention here to the last page, marked State's Exhibit 4D and the signatures thereon, you know whose signatures they are?

A. Signed by Donald Joseph.

Q. Was that signed in your presence?

A. That is right.

Q. Any other signatures?

A. Yes, my own signature and Tom Auls and John W. Giles.

Q. Those men were they all, the other two were police officers?

A. Yes sir.

OFFERS IN EVIDENCE AND OBJECTIONS THERETO

(And here, the State of Indiana, by counsel, offered to introduce and read in evidence the document above referred to which is marked for the purpose of identification as State's Exhibits 4, 4A, 4B, 4C and 4D with the exceptions of lines 15, 16, 17 ending with the figures 1935 and with the exception also beginning with line 20 on page 4C and con-

tinuing through lines 21, 22 and 23 and also including lines 1 and 2 of page 4D.)

[fol. 416] (Thereupon, the defendant, Paul Pierce, by counsel, interposed an objection to the introduction of the exhibit for the reason it is not shown that he was present during the time of the examination or the making of the exhibit and didn't sign the exhibit and it could not be, anything that Donald Joseph may have said in the absence of Paul Pierce, of said defendant, Paul Pierce, could not be used or considered as evidence against him if it was not in his presence. So far as the defendant, Donald Joseph is concerned, we object for the reason that it is not shown that the facts and circumstances are not shown surrounding the taking of this statement as to whether or not his constitutional rights have been violated and unless it is first shown that he was taken before a magistrate and advised as to his constitutional rights or that he was permitted to consult [fol. 417] with an attorney or advised that whatever he might say might be used against him and that he had a right not to make any statement at all and there is nothing in this man's testimony as yet which shows that any conversation or statement Mr. Joseph might have made at that time was voluntary and in short, there has been no premise laid which would permit this statement to go in evidence and for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention, he had received no instructions from any magistrate as to his constitutional rights, he had no representation or attorney representing him at that time to advise him as to what he should do with regard to this statement and that any statement made by Mr. Joseph in the presence of this officer or his associate, under the circumstances would be a violation of this defendant's constitutional rights, and [fol. 418] further it is shown by the testimony of this witness that at that time, the defendant, Donald Joseph, was wounded, was in physical pain and that under all circumstances, the exhibit was obtained while the defendant, while Donald Joseph was under duress, coercion and undue influence, threats and intimidation on the part of the police officers conducting the investigation, and we would ask leave of court to, before the ruling on the admissibility of this

statement, to present the facts and circumstances surrounding this taking.)

(The jury is now sent to the jury room and a hearing is had outside the presence of the jury, before the Court, and the defendants presented the following evidence in said hearing outside the presence of the jury:)

[fol. 419] DONALD JOSEPH called to the witness stand as a witness in behalf of the defendants and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows, in the hearing outside the presence of the jury, before the court, on examination in chief, such examination in chief being conducted by Waldo C. Ging, one of the attorneys for the defendants.

Q. State your name to the Court.
A. Donald Joseph.
Q. Are you one of the defendants in this case?
A. I am.
Q. And you were sworn some day or two, several days ago, weren't you?
A. Yes sir.
Q. Now, what is the fact, were you and Paul Pierce engaged in an altercation on Park Avenue at the Hazel Dell Apartments about the 7th of December, 1935?
A. Yes sir.
Q. Marion County, Indianapolis, Indiana?
A. Yes sir.
[fol. 420] Q. Now, Mr. Joseph, following that altercation, you were later on arrested and brought back to Indianapolis?
A. I was.
Q. And where were you first taken?
A. Indiana State Police Headquarters.
Q. And then from the Indiana State Police Headquarters, where were you taken?
A. Indianapolis City Police Headquarters.
Q. By whom?
A. Roy Pope, Tom Auls, Giles, another detective, I don't know what his name was.

Q. Anyhow, they were all police officers, is that true?
A. Yes sir.
Q. And at the time you were at the State House, as you have testified, you were under arrest?
A. Yes sir.
Q. In the custody of the Indiana State Police?
A. That is right.
Q. And when you were turned over or released by the Indiana State Police Department to the Indianapolis Police Department, were you under arrest?
A. I was.
Q. Were you wounded at that time?
A. Yes sir.
Q. What was the nature of your physical condition?
A. Well, I had had some loss of blood, hadn't had no medical treatment for nearly 72 hours.
[fol. 421] Q. Where were you shot?
A. Shot up underneath my left arm and came out my back.
Q. Did you have any other wound?
A. One across my stomach.
Q. It was more or less superficial, was it?
A. Superficial, yes.
Q. That wound occurred then during this altercation on the 7th of December, did it?
A. Yes.
Q. From that time until you were placed, taken to the Indianapolis State Police Office, had you received any medical attention from any doctor of medicine?
A. No sir.
Q. Had anything been done for your condition?
A. Nothing.
Q. Had you or Paul Pierce done anything attempting to doctor your own wounds?
A. Yes, we had tried to take care of ourselves.
Q. What did you use, if anything?
A. Used some bandage and I think some mercurochrome, I'm not sure.
Q. Did you receive any medical treatment at the Indiana State Police Headquarters?
A. No sir.
Q. Was Doctor Bird, did Doctor Bird call on you and give you any?

A. He may have been there.

Q. Sir?

[fol. 422] A. He may have been there, I never seen him.

Q. You never received, didn't receive any treatment from him?

A. No sir.

Q. Personally?

A. No.

Q. From the 7th day of December, 1935 or during the time you were in the custody and under the control of the Indiana State Police force, were you taken before any judicial officer, magistrate of any kind where you were advised as to your constitutional rights with regard to making statements and the effect of those statements?

A. No sir.

Q. Did you at that time, up to that time, have any legal advice from any practicing attorney of any kind?

A. No I didn't.

Q. Or had you been permitted, or had you seen or been permitted to see any of your relatives or friends for the purpose of advising with them?

A. No, I had not.

Q. Now, you were taken, as I understand you, from the State Police Headquarters to the Detective Office by Lieutenant Pope and some other officers?

A. That is right.

Q. Were both of you taken together in the same car, or do you remember?

A. I think we were, yes.

[fol. 423] Q. After you got to the State Police Headquarters, what did you do, what was done, I mean.

A. Nothing done in the State Police Headquarters for us.

Q. I mean at the Detective Department, I beg your pardon.

A. Paul and I were separated, he was taken to one room and I was taken to another.

Q. In the police headquarters?

A. Yes.

Q. Were you interrogated there?

A. Yes.

Q. By whom?

A. By Roy Pope and Tom Auls.

Q. And that was done in the office of the Indianapolis Police Department, was it?

A. Yes sir.

Q. While you were under arrest and in the custody of these police officers?

A. That is right.

Q. Do you remember when you were leaving the State House, going down the State House steps, you remember anything that Roy Pope said at that time?

A. Said something about, why don't you run now you son of a bitch.

Q. Well, after you got to the State Police office and you went in and these two officers questioned you, before that questioning was had and accomplished, were you taken to the Court House or to any judicial officer or magistrate of [fol. 424] any kind?

A. No sir.

Q. Did you at any time ask for permission to get a lawyer to talk to a lawyer?

A. I asked Roy Pope many times to get me a lawyer.

Q. What did he say on those occasions?

A. Told me I didn't need a lawyer.

Q. How long did this questioning take place, do you remember?

A. Well, I'd say around 9:30 in the morning until late in the evening, 5 o'clock, around there some place.

Q. How many times did you ask Mr. Pope to get a lawyer for you?

A. I asked him numerous times.

Q. Did you say anything to him about your father or mother or relatives?

A. I asked him to see them and he said no.

Q. You did sign this statement, did you?

A. Yes I did.

Q. Now, prior to the time this statement was signed, was there anything said to you by these officers in whose custody you were, about medication or hospitalization?

A. Well, I was told as soon as I signed this statement, I would get medical attention.

Q. Who told you that?

A. Roy Pope.

Q. How many times, if you know, was that statement made to you?

[fol. 425] A. I don't know exactly how many times, I asked him quite a few times?

Q. More than once?

A. Oh yes.

Q. That was over a period of how long, from the time the questioning started until you finally signed the statement, do you think?

A. About 30 hours, I should say.

Q. You mean you were questioned 30 hours in the police department?

A. No, I wasn't questioned 30 hours.

Q. From the time the questioning started until you finally got to the hospital, is was about 30 hours?

A. That is right.

Q. And during that 30 hours, had you ever seen a lawyer or anybody of any kind?

A. Seen no one but Mr. Pope and Mr. Auls.

Q. And those are the only people you had seen?

A. That is all.

Q. Did you sign this statement the first day the questioning started?

A. No, that was signed the next day, after I was brought to Indianapolis.

Q. Then you didn't sign it the first night, you think the questioning, you said, I believe, the questioning started about 9 or 9:30 in the morning and continued until about five in the evening?

[fol. 426] A. Yes.

Q. Then what happened?

A. I was placed upstairs in a stripped cell.

Q. What do you mean?

A. No bed in there, nothing but a washbowl.

Q. Any chairs?

A. No chairs.

Q. Any conveniences of any kind?

A. No.

Q. Did you sleep that night?

A. Not very much.

Q. What did you have to sleep on?

A. A bed made out of steel slats.

Q. What about the heat, was it comfortable, heated room?

A. Wasn't very comfortable in that place, sir. I wasn't very comfortable in there.

Q. Were you questioned any that night?

A. Two men came up there that night, I don't know who they were. The Turnkey, fellow name of Sweeny brought them up there. Policeman off the south side of Indianapolis the one that brought them upstairs. I don't know who they were.

Q. Did they question you?

A. They asked me about the case, yes.

Q. How long did that take?

A. Half hour.

Q. Was there anything said about hospitalization or any- [fol. 427] thing of that kind?

A. No, I never said nothing to them.

Q. I call your attention to an occurrence before the signing of the statement on the morning of December 11, do you remember anything that happened, Mr. Joseph?

A. Pope took me to the wash room. When we came back, he kicked me twice when I was coming through the door into the small interrogation room.

Q. With his foot?

A. Yes.

Q. Where did it land?

A. Lower part of my back.

Q. What did he say when he did that, anything?

A. I don't remember him saying anything.

Q. At that time there had been no confession, no statement made?

A. No.

Q. No written or signed statement?

A. No.

Q. About when was it when you signed the statement that is Exhibit 4?

A. I thought it was around 3 o'clock in the afternoon on the 11th. Late in the afternoon.

Q. On the 11th?

A. Yes.

Q. Do you know who wrote that statement?

A. I think Roy Pope wrote it.

[fol. 428] Q. Was it written in your presence?

A. I think it was, yes.

Q. Was it written all in his handwriting?

A. I think it was, yes.

Q. Was there more than one copy made of it?

A. I don't know about that.

Q. You weren't given a copy, were you?

A. No.

Q. Look at all of it and whether you think that is the statement that you have been testifying about?

A. I think that is it, yes sir.

Q. Sir?

A. That is the statement, yes sir.

Q. At the time that statement was made, was Orville Quinnette still alive?

A. Yes sir.

Q. Did you have a reason for making that statement?

A. Yes.

Q. What?

A. I wanted medical attention, one thing I was promised I would get it.

Q. Had you been refused medical attention when you signed the statement?

A. Yes.

Q. Was that told to you more than once?

A. Yes.

Q. By whom?

[fol. 429] A. Roy Pope.

Q. Did you, after the statement was signed, did you get medical attention?

A. Yes.

Q. Where were you taken to get it?

A. City Hospital, Indianapolis.

By Mr. Ging: I believe that is all.

Cross-examination.

(The said witness testified further as follows on Cross-examination in the hearing before the Court, outside the presence of the jury, such cross-examination being con-

ducted by John Dailey, one of the attorneys for the State of Indiana.)

Q. Did you need medical attention during the period of time that elapsed from the time of the shooting until you were captured by the State Police?

A. I did.

Q. But you didn't make any effort to get it?

A. No.

Q. Nobody hit you or beat you or twisted your arm there in police headquarters, to make that statement, did they?

[fol. 430] A. Only Pope kicked me twice.

Q. That was after the statement was made according to your testimony?

A. No.

Q. What day did you make the statement?

A. 11th.

Q. If you made the statement on the 10th, at that time, nobody touched you.

A. Nobody touched me on the 10th, no.

Q. And you did talk freely to the State Police from the Hedley farm into Rushville, didn't you?

A. I don't remember that.

Q. You don't remember?

A. No, not the conversation.

Q. You talked to Captain Matt Leach down at the State House, didn't you?

A. I talked to Matt Leach.

Q. He didn't lay any hand on you or twist your arm?

A. No, he never touched me.

Q. By the way, do you remember a Doctor Earl Juitt of St. Paul that was indicted for being an accessory after the fact because he treated you?

A. I never seen the man.

Q. No doctor came there to that Hedley home?

A. No, I never seen him.

Q. Well, did this doctor treat Paul Pierce there?

A. I don't know what he done for Paul.

[fol. 431] Q. You were there with him?

A. I went to bed that evening. He could have got up without me knowing.

Q. He might have had medical treatment?
A. I don't know, not more than I gave him. The bandage was the same bandage I put on him.
Q. You never heard of this doctor then?
A. Sir?
Q. You never heard of this doctor?
A. I have heard of him, yes, a dozen times.

By Mr. Dailey: That is all.

Redirect examination.

(The said witness testified further as follows in the hearing before the Court, outside the presence of the jury, in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. One other question, this kicking that you say Lieutenant Pope did, kicked you in the back twice?
A. Yes.
Q. That was before the signing of this Exhibit 4?
A. That is right.

By Mr. Ging: That is all.

[fol. 432] Recross-examination.

(The said witness testified further as follows in the hearing before the court, outside the presence of the jury, in response to questions propounded by John Dailey, one of the attorneys for the State of Indiana.)

Q. Lets get it straight now. You didn't make any statement on the 10th?
A. I did not.
Q. If you were mistreated at all, it was on the 10th?
A. That is right.

By Mr. Dailey: That is all.

(And further this witness saith not in the hearing before the Court, outside the presence of the jury.)

(And here, the defendants rest on the hearing before the Court, and outside the presence of the jury.)

(And now, the State of Indiana, presented its evidence in the hearing before the Court, outside the presence of the jury.)

Roy Pope recalled to the witness stand as a witness in [fol. 433] behalf of the State of Indiana and having heretofore been sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows, in the hearing before the court, outside the presence of the jury, on Examination in Chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. You are the same Roy Pope of the Indianapolis Police Department that was on the stand here a short while ago?

A. Yes sir.

Q. Before you took a statement and during the time you took the statement from Donald Joseph, did you at any time hit him, kick him, beat him?

A. I never touched him, no.

Q. See anyone hit him, kick him, beat him, cuss him out?

A. No.

Q. Lay any hands on him?

A. No sir.

Q. Were you with him all the time from the time he was brought from State Police Headquarters until after he made the statement?

A. Yes sir.

[fol. 434] Q. Fact of the matter, you went to the hospital with him?

A. Yes sir.

Q. Did you at any time tell him he wouldn't get medical treatment until he made a statement?

A. I did not.

Q. You heard him testify that you booted him a couple of times?

A. Yes, I heard that.

Q. Did you boot him?

A. Never touched him except taking hold of his arm, bringing him over from the State House.

Q. Who was with you there in the room?

A. Detective Anls.

Q. Did he touch him?

A. No he didn't.

Q. Promise him anything?

A. No sir.

Q. Did Joseph ever demand a lawyer?

A. He did not.

Q. Any of his family there to see him?

A. Nobody was there to see him.

Q. What do you know about the fact of him receiving medical treatment at the State House immediately before he was turned over to you.

A. Yes, he was treated.

By Mr. Ging: If he knows.

By the Court: If you know of your own knowledge.

[fol. 435] A. They said he was treated by Doctor Bird.

Q. Joseph tell you that?

A. Yes, he said they were treated. He didn't say Doctor Bird. He thought he was given tetanus shots. Leach told told me Doctor Bird was the one that attended them.

Q. As to whether they told this story willingly or unwillingly?

A. Willingly.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows, on the hearing before the court outside the presence of the jury, in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. When you were going down the State House steps, you told them, now run you sons of bitches, didn't you?

A. No I didn't.

Q. You didn't use that kind of language?

A. No I never.

Q. The fact is that they wanted a lawyer, didn't they, Joseph wanted a lawyer?

A. Neither one of them asked for lawyers.

[fol. 436] Q. Asked of you officers for a lawyer?

A. No.

Q. And you say none of their folks were there?

A. If they did, I didn't see them.

Q. They wouldn't have been admitted if they had been there?

A. Yes, they would have been admitted.

Q. Before you got through questioning?

A. During the time we was questioning, probably not any time before or after, they would have been.

Q. You didn't want them to have the advise from a magistrate of any kind or lawyer or even their own friends until you got through with them, did you?

A. They never asked for it.

Q. And they did ask for medical attention, to be taken to the hospital and be treated, didn't they?

A. No.

Q. But, the very minute they signed the statement, they were loaded into cars and taken to the hospital for treatmen, where they got treatment?

A. I wouldn't say the very minute, that same afternoon, that same morning.

Q. Within a very very short time after they signed the statement, they were loaded in the cars and taken to the hospital where they did receive treatment and in the operating room, on the operating tables and got their wounds treated and whatever probing was necessary to cleanse their wounds was done at the hospital?

[fol. 437] A. That is right.

Q. And not until they signed this statement?

A. Not that treatment they didn't get. They had had treatment, but not that one.

By Mr. Ging: That is all.

(And further this witness saith not in the hearing before the Court outside the presence of the jury.)

(And here, the State of Indiana rested on the hearing before the Court, outside the presence of the jury.)

(And that was all the evidence introduced in the hearing before the Court, outside the presence of the jury.)

(And here, at the hour of 4:00 P.M. Monday, February 1, 1954 Court adjourned.)

(And now, at the hour of 9:00 A.M. Tuesday, February 2, 1954, Court convened and the trial of this cause was resumed and the jury is brought into open Court and the Trial of [fol. 438] this cause was resumed before the jury.

Roy Pope recalled to the witness stand as a witness in behalf of the State of Indiana and having heretofore been sworn testified as follows on Examination in Chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

(The court now overrules the objection as to the defendant, Donald Joseph and sustains it as to the defendant, Paul Pierce, and the exhibit sought to be introduced will be considered by the jury only as to the defendant, Donald Joseph and not as to the defendant, Paul Pierce.)

Q. Your name please?

A. Roy Pope.

Q. You are the same Roy Pope that was testifying at court adjournment yesterday?

A. That is right.

Q. I previously asked you to identify State's Exhibit 4 and I want now to direct your attention to some initials that [fol. 439] appear on each page thereof excepting the page marked 4D, do you know whether those initials that appear up in the upper right hand corner were there at the time this was signed by Donald Joseph?

A. That is right.

Q. Now, I want to direct your attention to some numbers that appear in the upper left hand corner, 11489, you know anything about those?

A. I think that is our case number of our assignment.

(And now, the State of Indiana by counsel, introduced and read in evidence, the document above referred to which is marked for the purpose of identification as State's Exhibit 4, 4A, 4B, 4C and 4D, which exhibit so introduced and so read in evidence was and is as follows:)

STATE'S EXHIBIT No. 4

11489 Dec. 10th 1935 DJ

STATEMENT OF DONALD JOSEPH

My name is Donald Joseph I am 27 years old and have been living at 1201 Park Ave Apt 5 with Paul Pierce and Grace Nowling. Since Nov 29th 1935. On this date Grace Nowling and I rented this apt. from the custodian of the Hazle Dell under the name of D. C. Coleman. I told the Custodian Tobe Blackwell that my brother was going to live [fol. 440] with us. The same afternoon Paul Pierce came to the apt. Pierce and I stayed at this apt every night, except Friday Dec 6th when Pierce and I stayed all night at 2918 School St with Grace Nowling. Previous to Nov. 29th 1935 Pierce and I stayed several nights at 2918 School St. with Grace Nowling. We had five guns in the apt at 1201 Park. Three of the guns were in a brief case and Pierce and I were carrying the other two. "Saturday Dec 7th 1935 about 2 P.M. Pierce and I were in the apt at 1201 Park Ave. and some one knocked on

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STATE'S EXHIBIT No. 4A

No 2

111489 D J

the front door. Paul Pierce opened the door and two men came in. One of the men ask for Coleman. I told the man I was Coleman and Paul also spoke up and said he was Coleman. Then one of the men, who I learned later was Detective Chatham pulled back his coat and said we are from the Detective Bureau. Then Paul Pierce pulled a 38 caliber pistol out of his pocket and said to the officers put up your hands. I then hit Detective Chatham with my fist and we clenched and fell on the davenport that was in the living

room near the front door of the apt. I could see the other officer who I learned was Detective Quinnette and Paul Pierce shooting at each other. I think about ten shots were fired. I was still scuffling with detective Chatham, who shot me in the left shoulder. I told Chatham I was shot and not [fol. 441] to shoot me any more. We continued scuffling to the hall in front of the apt. and Chatham turned me loose"

STATE'S EXHIBIT No. 4B

#3

111489 DJ

and I ran back in the apt. and Chatham ran down stairs. I joined Pierce in the apt and we both took the brief case with the three guns in it. and ran out back door of the apt and down the back stairway to the alley, and north in the alley to 13th St. and east on 13th a short distance where Pierce and I stepped out in front of a dodge Cp. that was going east on 13th St. Pierce and I held guns on the colored driver of this car, made him stop and get out. Pierce and I took this car. I got back of the wheel and drove the car east to Arlington Ave. south on Arlington to road 29 and to Shelbyville and out of Shelbyville on road 244 to Sylvia Headlee home near Gouty, Ind. We arrived at the Headlee home about 3:30 P.M. the day of the shooting. Headlee wife was there and we went in the house and told Mrs. Headlee we had been shot. We got some water and a bottle of Lysol and some bandages out of the doctors grip that was in the stolen dodge, and

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STATE'S EXHIBIT No. 4C

111489 #4 DJ

Pierce dressed the gun shot wound in my left shoulder and [fol. 442] I dressed the wound in Pierce left shoulder. Then Pierce and I went to bed. We stayed in bed until about 10 P.M. and Pierce and I thought we had better take the stolen dodge Cp that we had parked in Headlee's barn away from the place. Pierce and I got in the dodge car and

Headlee got in his Chev. Sed. and all of us drove about eight miles from the Headlee home and parked the dodge along the side of the road and Pierce and I got in Headlee's car and drove back to Headlee's home where we stayed until arrested by the officers about 2:30 AM today. The top brake nickle revolver found in the apt at 1201 Park Ave. was the revolver used by Paul Pierce in the shooting of Detective Quinnette.

STATE'S EXHIBIT 4D

111489 #5 DJ

This is a true statement made by my own free will & accord knowing it can be used for or against me in the courts.

Signed Donald Joseph.

Witnesses
R. A. Pope
Thomas Aulls
John W. Giles.

Q. Now, Mr. Pope, after you took this statement from Joseph, did you have any further connection with this case?

A. Yes.

Q. What was that?

[fol. 443] A. After we took the statement, we took he and Paul Pierce to the City Hospital, that was around about 12 o'clock on December 10 and took them out there for treatment and they were treated by the doctors and given tetanus shots and then we brought them back to Detective Headquarters where we took additional statement, possibly up until 5 or 5:30 in the afternoon.

Q. That didn't concern the shooting of Quinnette directly, the other statement, as I understand it?

A. Not the shooting, no.

Q. After that statement was taken, did you have any other connection with this case?

A. Yes, on the 13th of December, about 11 A.M. we took Paul Pierce to the City Hospital and took him in the room of Detective Quinnette. He was identified——

(Thereupon, the defendants, by counsel, separately and severally interposed an objection to the last part of the last answer for the reason it is a conclusion on the part of the witness, and also for the reason it is not shown that the defendant, Donald Joseph was present.)

By the Court: Strike out "he was identified".

Q. Now, Mr. Pope, you said you went to Detective Quin-
[fol. 444] nette's room, who went with you?
A. Detective McCarty and Detective Aulls?
Q. Who else, was the defendant, Joseph present?
A. The defendant, Paul Pierce was there at this time.
Q. Oh, the defendant, Paul Pierce, and any conversation, anything said in the presence of Pierce at that time?
A. Yes.
Q. Now, what was said?

(To which question and the answer sought to be elicited thereby, the defendant, Donald Joseph, by counsel, interposed an objection for the reason it is shown that he was not present at the time of the conversation.)

By the Court: Objection sustained as to Donald Joseph and any evidence given in response to this question will not be considered by the jury as to the issue with Donald Joseph.

Q. Now, what was said and by whom?
A. Detective Quinnette raised up off of his bed and pointed his finger at Paul Pierce, said, you shot me without giving me a chance.
Q. I guess you then returned Pierce to jail?
A. That is right.
[fol. 445] Q. On the way to or from the jail, was there any conversation with the defendant Pierce?
A. That is right.
Q. Joseph was not along?
A. He wasn't along at this time.
Q. What was this conversation?

(To which question and the answer sought to be elicited thereby, the defendant, Donald Joseph, by counsel, interposed an objection because it is shown that he was not present at the time the alleged conversation was had.)

By the Court: Objection of Donald Joseph is sustained and the jury will not consider any answer given to this question on the issue between the State and Donald Joseph.

Q. All right now, will you relate what was said and who said it?

A. Paul Pierce said, that if that officer dies at the City Hospital and I burn for it, I will deserve it.

Q. Now, after your return to the jail with Pierce, did that conclude your investigation?

A. We made an investigation before.

Q. I'm coming to that. In point of time, was that the [fol. 446] termination of your investigation in this case?

A. That day, yes.

Q. Now, I believe, did you go along with some officers at the time or this day after you took the statement from Joseph, you went with some other officers and Joseph and Pierce to the hospital, you testified about that?

A. Yes, on the 10th.

Q. Now, was there any conversation during that trip to and from the hospital with the defendants Joseph and Pierce?

A. I don't recall any.

Q. Either going or coming?

A. I don't recall any conversation at that time.

Q. Now, I believe, Mr. Pope, that you were with one of the original officers that went out to 1200 Park Avenue to the Hazel Dell immediately after the shooting, is that correct?

A. That is right, about two minutes after.

Q. Did you make any investigation out there at that time?

A. I did.

Q. Will you tell the jury what you found?

A. We received a called about 2:20 in the afternoon that two detectives were shot at 12th and Park and we were cruising around about 10th on Meridian Street, it took us possibly two minutes to get over there and as we drove up to 12th and Park, we saw Detective Quinnette in the Street in his shirt sleeves with blood all over his shirt and he [fol. 447] says——

By Mr. Ging: Now, wait a minute.

By the Court: It is not proper for you to give a conversation.

A. —and we immediately went to the third floor, apartment 5 of the Hazel Dell Apartments at 1201 Park Avenue, the front door was open and the room was full of gun smoke and we searched the apartment and we didn't find any human there and we put out a general alarm from the description we got there.

Q. Did you find any guns there?

A. Yes, we found a gun in the bedroom, west bedroom or sun parlor, whatever you might call it, in a little drawer, 38 Colts revolver and holster and Detective Quinnette went up there with us and he picked a nickel plated, top break Smith and Weston revolver off the floor and handed it to me. Then, we called the Bertillon man, or fingerprint expert, had him come up there and he dusted all the furniture and all the cooking utensils and dishes and canned goods and ice box and he took two prints, took a thumb print we learned later was——

By Mr. Ging: No, now.

A. He took some prints.

Q. Now, let's return to this top-break revolver that you found there, did you examine that revolver?

[fol. 448] A. I did.

Q. What did you find?

A. It was empty with exception of one cartridge that didn't fire, it was snapped and didn't fire.

Q. How many cartridges in all?

A. They were, I couldn't tell you whether there was 5 or 6, I'm pretty sure it was five but I'm not absolutely sure, I know all of them were fired with the exception of this one.

Q. Find any other guns there?

A. I didn't, Detective Chatham, I think, took Quinnette's gun.

(Thereupon, the defendants, by counsel, separately and severally moved to have the last answer stricken from the record for the reason the witness is guessing.)

By the Court: Strike out the answer.

Q. You just found the one gun?

A. The one gun in the dresser drawer was found by Detective McCarty.

Q. Were you there when he found it?

A. Yes, I was there.

Q. And the other gun?

A. The other gun that Chatham found and handed me off the floor.

[fol. 449] Q. Was handed to you?

A. That is right.

Q. The one that was taken up off the floor and handed to you, you know whose gun that was?

A. At that time I didn't know.

Q. What kind of a gun was it, do you remember?

A. Smith and Weston No. 45969 top break revolver.

Q. Do you remember what kind of a gun it was that was taken out of the dresser drawer?

A. 38 Colts revolver.

Q. As to whether or not it was loaded?

A. It was fully loaded.

Q. Now, do I understand, you found one gun and saw two other guns picked up?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection for the reason he hasn't testified to that, it is an assumption of the fact that the witness hasn't testified to.)

By the Court: Objection sustained.

Q. How many guns in all did you either find yourself or see picked up while you were there during your investiga-

[fol. 450] tion?

A. Two.

Q. I'm sorry, the one in the dresser drawer and the other on the floor?

A. That is right.

Q. Now, did you examine the room further for any other facts?

A. Yes, examined it for fingerprints.

Q. Did you observe whether there were any damage done in the walls, any holes?

A. There were bullet holes in the walls, bullet holes in the floor, bullet holes in a chair, bullet hole back of the kitchen stove and we took six bullets out of the apartment,

along with the two guns, two suit cases, quite a lot of clothing, shirts, all the canned goods and dishes and other articles that we thought that belonged to the men who lived there.

Q. By the way officer, do you know where either of those guns are today?

A. They were turned in to the property room and I couldn't tell you, I don't have any idea as to where they are.

Q. Are they in the property room of the Police Department now?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and sev-
[fol. 451] erally interposed an objection unless he first shows he is custodian over that room, that property.)

By the Court: Not what somebody else told you.

Q. This happened in Indianapolis, Marion County, State of Indiana?

A. Yes sir.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows on cross-examination in response to questions propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. How long were you on the police force?

A. I was on the police force from the time I was 19 up until I retired at, in '45.

Q. You went to the apartment, were there, you say the room was full of smoke?

A. That is right.

Q. And did you find the gun that belonged to Officer Quinnette there?

A. I didn't. Officer Chatham found it.

Q. Where was it?

[fol. 452] A. He said he found it on the floor, I didn't see him pick it up.

Q. You didn't see the gun, what part of the house was it in?

A. In the living room, he said.

Q. Where was the silver-plated Smith and Weston, where was it found?

A. In the living room.

Q. You say the magazine or chamber, whatever you call it, was five cartridges?

A. I'm not positive whether 5 or 6, I think all of them are 5.

Q. You don't know how many cartridges were in the gun at the time the altercation started?

A. Either 5 or 6.

Q. You don't know how many cartridges were in the gun at the time the altercation started?

A. No, I'm not sure whether 5 or 6.

Q. You don't know whether there was 5 or 4 or 3 or 2 or 1?

A. Yes, I know either 5 or 6 in the gun.

Q. You didn't see the gun before it was fired, before the altercation started, did you?

A. No sir.

Q. So, you don't know how many cartridges were in that gun at the time the shooting started?

A. There were either four empties and one that didn't fire or five empties and one that didn't fire.

[fol. 453] Q. Do you mean to tell this jury now that you know that at the time this shooting started, that there was a cartridge in every chamber of that gun?

A. I couldn't tell whether for sure, no.

Q. You don't know whether there were, how many cartridges were in the gun, actually in the gun at the time the shooting started, do you?

A. I don't know whether you mean loaded cartridges?

Q. I mean loaded cartridges.

A. No, I'm not sure about that.

Q. You say there were six bullet holes found, is that what you said?

A. We took six bullets to headquarters from the apartment.

Q. Where did you find those?

A. On the floor, some back of the stove, found them in the wall, in the furniture.

Q. You mean you got actually the bullets themselves?

A. That is right, spent bullets.

Q. They were what size, the bullets?

A. What size bullets, 38, looked like 38 bullets, we didn't weigh them.

Q. What do you mean by spent bullet?

A. Bullet that has been fired from a gun.

Q. Do you mean to say that a bullet fired from a gun, a 38, with a power of a 38 revolver, that that bullet wouldn't go through a wall?

A. Some of them goes through walls, yes and some of [fol. 454] them don't.

Q. Wouldn't go through the floor, down into the room below?

A. Some of them are deflected by something and glances off and hits something else.

Q. Were all of these deflected?

A. I couldn't tell whether deflected or not.

Q. How deep in the floor had that bullet penetrated?

A. I couldn't tell you, we dug one out of the floor, dug some out of the wall, some out of the back of the gas stove.

Q. They were all what you call spent bullets?

A. Yes.

Q. All from a 38?

A. That is right.

Q. Did Quinnette carry a 38?

A. That is his regulation gun is a 38.

Q. And what is the capacity, how many cartridges was the capacity of his gun?

A. Would be six.

Q. Were all the bullets fired from his gun?

A. I couldn't tell you that, I didn't handle his gun.

Q. You didn't examine it?

A. No.

Q. What kind of a gun was it you found in this dresser drawer?

A. 38 Colts.

Q. You don't know who it belonged to, do you?

A. Yes, I have an idea who it belonged to but personally [fol. 455] I don't.

Q. You don't know?

A. Not of my knowledge, no.

Q. When was the last time you saw this nickel plated gun?

A. We had it over here at the first trial.

Q. That was 18 years ago?

A. Yes.

Q. And this other gun, was it over here?

A. Yes.

Q. Were there any other guns you had over here at the other trial?

A. Well, I'm not sure whether the other guns were here at that time or not, I'm not positive about that. Two other guns but I don't know whether they were over here or not.

Q. The facts are that those guns were just distributed around to the members of the police department who wanted them, isn't that true?

A. That isn't true, they were turned into the property room.

Q. In any event, they have disappeared?

A. Yes.

Q. They are not here?

A. That is right.

Q. They weren't here in the November trial, were they?

A. No they weren't.

Q. Did you make any inspection of the premises at 13th Street and the alley north of this property, this apartment house?

[fol. 456] A. In the alley, you mean?

Q. Where the car was commandeered by these men?

A. No, I didn't go up there.

Q. You know whether any guns were found at that point?

A. No there wasn't.

Q. No guns?

A. No guns found at that place. If there was they weren't turned in.

Q. Now, you don't remember any other conversation that you had, as I understand you, you went to the hospital when these boys went to the hospital to receive medical attention, you came back with them, did you?

A. That is right.

Q. You took them to the hospital where Quinnette was and came back?

A. Took one of them, yes.

Q. And the only conversation that you remember being said was what Mr. Pierce said which was introduced against him, was, if that officer dies and I burn for it, I'll deserve it?

A. No, there was another conversation that I had with Pierce just before he told me this.

Q. About this shooting?

A. I asked him about killing a policeman in Anderson——

Q. No, I don't mean that.

By the Court: Don't get into that.

[fol. 457] By Mr. Ging: You want to get in everything.

By the Court: That isn't a proper remark, strike it from the record.

Q. Well, that is what he said, just said, if that officer dies, I'll burn for it, I'll deserve it, if I burn for it?

A. That is what he said.

Q. Those are his exact words?

A. That is right.

Q. Who was present when that conversation was had?

A. There was Detective Aulls and myself and McCarty.

Q. Where were you seated in the car?

A. In the front seat next to the driver, Tom Aulls was the driver.

Q. Who was your partner at this time, at the time you took this written statement that you have testified about?

A. On my squad I had Detective Aulls and McCarty.

Q. Who was with you when the statement was taken?

A. Detective Aulls when Joseph's statement was taken.

Q. That is what I'm talking about. Did you have anything to do with the statement taken from Pierce?

A. No, that was taken by Detective McCarty.

Q. Were you in the room where the statement was being taken from Pierce by McCarty and John Giles, weren't you?

A. I might have been in there after the statement was [fol. 458] taken. They took them in a room and took Pierce's statement, I took Joseph in a room and took his statement.

Q. Where were those rooms?

A. In Detective Headquarters.

Q. How far apart were these rooms?

A. I don't know exactly how far, not as far as from here to the back of the room, probably half as far.

Q. And Tom Aulls, is he still alive?

A. He is.

Q. And a man named John Gish, he have anything to do with those?

A. John Gish wasn't in the room where our statement was taken unless he was in there afterwards.

Q. John Giles, was he present during the time the statement was taken from Joseph?

A. I don't think he was present during the time. I think he came in and the statement was read in Joseph's presence and he signed it as a witness.

Q. Who read it?

A. I read it.

Q. Who wrote it?

A. I wrote it.

Q. This is all in your handwriting, is it?

A. Yes sir.

Q. Is all of this statement the exact language of Don Joseph?

A. All with the exception of the last lines and I asked him, [fol. 459] if I may answer it, I asked him if it was a true statement and he said it was and I asked him if it was made by his own free will and accord and he said it was, knowing it would be used for or against him in the court, that part I added.

Q. At that time you knew he had been shot, Joseph had been shot?

A. Yes, I heard that he had been shot.

Q. Did you examine him physically in any way to determine his physical condition?

A. No, I didn't examine him.

Q. Do you know whether he was suffering any pain?

A. Didn't say anything about it.

Q. Ask for a lawyer?

A. No he didn't.

Q. Didn't ask to see his friends or relatives, nothing?

A. Never asked a thing, no.

Q. While he was in your custody, and before this statement was made, had you taken him to any magistrate or judicial officer of any kind to advise him as to his rights?

A. No sir.

Q. And until after the statement was signed, he wasn't taken to the hospital, was he?

A. Not to the hospital.

Q. And wasn't given, after he was placed in your custody, was not given any medical treatment at all until after he signed this statement?

[fol. 460] A. No, he was given medical treatment at the State House.

Q. That was before?

A. Before we received him.

Q. I say, during the time the man was in your custody as an officer and prior to the time that the statement was made, he hadn't, didn't receive any medical attention, did he?

A. Not at police headquarters.

Q. That is what I mean.

Q. And he hadn't, prior to the time the statement was made, during the time he was in your custody, he was not interviewed or had no opportunity to consult with an attorney, did he?

A. Well, he had an opportunity but he didn't ask to see an attorney.

Q. You would have gotten him an attorney, I suppose, if he had asked for it before this statement was signed?

A. During the statement possibly no.

Q. You weren't going to do anything for him until you compelled him to sign this statement, is that right?

A. That is not true.

Q. Now, he told you, did he, that he was living with Paul Pierce and Grace Nowling?

A. Yes, he said he rented the apartment.

Q. Well, these are his exact words: He was living at 1201 Park Avenue, apartment 5 with Paul Pierce and Grace Nowling since November 29, 1935?

[fol 461] A. That is right.

Q. As I understand you, let's understand one another, as I understand you, this statement or this exhibit, the words of the exhibit and expressions are the expressions and words of Donald Joseph and not your words?

A. Except what I just told you.

Q. With that one exception?

A. With that exception, yes, that is right.

Q. Now, it says, the same afternoon Paul Pierce came to the apartment, Pierce and I stayed at this apartment every night except?

A. Yes.

Q. That is what he told you, except Friday, December 7 when Pierce and I stayed all night at 2918 School Street with Grace Nowling?

A. That is right.

Q. Now, he told you, did he, that they had three guns in a brief case, is that right?

A. And they were carrying the other two, yes sir.

Q. This happened more than 18 years ago?

A. About 18, yes, little over 18 years ago.

Q. And you have now an independent recollection of the things that Donald Joseph told you, do you?

A. I remember quite a lot of them but I referred to my notes and my records for the rest so I'd be sure.

Q. Oh, your notes and records, of course, you had these things written down, did you?

[fol. 462] A. Yes, I had the whole case written down.

Q. And you have talked to Jesse McCarty and Tom Aulls and John Giles?

A. I have talked to all of them.

Q. You have talked to them about this case many times?

A. No.

Q. You talked to the Prosecuting Attorneys about it?

A. Yes, I have talked to the Prosecuting Attorney about it.

Q. Now, as I understand, Tom Aulls, John Giles, Jesse McCarty and you are all now retired police officers, is that right?

A. That is right.

Q. Now, the statement that you say you wrote, Saturday, December 7, 1935 about 2 P.M. Pierce and I were in the apartment at 1201 Park Avenue and someone knocked on the front door, Paul Pierce opened the door and two men came in. Is that what he told you?

A. That is right.

Q. Two men came in, came in the apartment?

A. That is right.

Q. That is what he told you, was it?

A. That is right.

Q. Then he told you that after they came in, one of the men asked for Coleman. I told the man I was Coleman and Paul also spoke up and said he was Coleman, then, one of the men, who I learned later was Detective Chatham pulled back his coat and said, we are from the Detective Bureau, [fol. 463] is that what he said?

A. That is right.

Q. He didn't say he was from the Indianapolis Detective Bureau?

A. No, he said from Detective Bureau.

Q. There are private Detective Bureaus in Indianapolis, aren't there, at that time?

A. Yes, I suppose, there is private detective agencies. I don't know whether you call them bureaus or not.

Q. Did Donald Joseph ever say anything, indicate to you by anything he said that he had a gun at that time on his person?

A. No he said he had, they had five guns.

Q. Did he say he had one at the time the shooting was in progress?

A. No, he didn't say anything about that.

Q. Did Don Joseph ever tell you that he was shot twice?

A. No, he said he was shot in the left shoulder.

Q. Didn't say anything about being shot across the stomach?

A. That I remember, I don't recall him saying it.

Q. He never told you about that?

A. No.

Q. You didn't examine him to see if there was any wound across the front of his stomach?

A. I knew there had been but I didn't examine him, no.

Q. Now, Joseph did tell you that he got in back of the wheel and drove the *d*odge car, didn't he?

[fol. 464] A. That is right.

Q. Now, these exhibits, particularly the exhibit marked State's Exhibit 4D, when was that signed?

A. All of them were signed on the morning of the 10th of December, 1935.

Q. What time did you get these men from State Police Headquarters that morning?

A. Went over there at 9 o'clock after them.

Q. How long were you over there?

A. Possibly 20 minutes, 30 minutes, I wouldn't know, not very long.

Q. Then you took them back to police headquarters and what time in the morning were these, was all these pages signed, were all these pages signed?

A. I'd say between 9:30 in the morning or quarter of 10 until a quarter of 12 because we went out to the hospital at 12 o'clock.

Q. You went to the hospital that same day?

A. Yes.

Q. You mean to say that Donald Joseph never asked for hospitalization or medical treatment during all the time you talked to him and during all the time you were consumed in writing up this statement in your own handwriting?

A. He said he had had medical treatment.

Q. I say, did he ask for hospitalization or medical treatment?

A. At the police headquarters, no sir.

[fol. 465] Q. As soon as the statement was signed, you did take him to the hospital for hospitalization or whatever treatment he needed out there?

A. That is right.

Q. He didn't get it before he signed this statement, did he?

A. Yes, he got medical treatment.

Q. You didn't see that he got any?

A. No I didn't.

Q. Now, after he signed the statement, after he signed this statement, as you have testified, did he ask to be taken to the hospital or to receive medical treatment?

A. No.

Q. But you took him anyhow?

A. That is right.

Q. Now, Mr. Pope, you are a brother of James Pope, are you not?

A. Yes sir, he is not a full brother of mine.

Q. Who is now confined in the Hancock County Jail for murder?

(To which question and the answer sought to be elicited thereby, the State of Indiana, by counsel, interposed an

objection, for the reason that that doesn't have anything to do with this.)

By the Court: Objection sustained.

[fol. 466] Q. That case is being prosecuted by Mr. Fairchild and his deputies against your brother?

By the Court: Objection sustained, we are not trying that case.

By Mr. Ging: That is all.

Redirect-examination.

(The said witness testified further as follows on Redirect-examination in response to questions propounded by John Dailey, one of the attorneys for the State of Indiana.)

Q. When you did take Pierce and Joseph to the hospital, how long did the doctors look at them or treat them?

A. Oh possibly 30 minutes, 40 minutes.

Q. Then they were returned to the jail?

A. That is right.

Q. Released by the hospital?

A. That is right.

[fol. 467] JOHN GILES called to the witness stand and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief, such examination in chief being conducted by John Dailey, one of the attorneys for the State of Indiana.

Q. State your name.

A. John Giles.

Q. Where do you live now?

A. I live in Indianapolis now.

Q. And your occupation at this time?

A. Retired.

Q. Formerly what was it?

A. Police Department, Indianapolis.

Q. And you were a member of the Police Department on the 7th of December, 1935?

A. I was.

Q. You have any part in the investigation of the shooting of Officer Quinnette?

A. I helped take the statement of Paul Pierce after they was brought in, after brought to headquarters.

Q. Did you have any other connection with the case?

[fol. 468] A. That was the only connection I had, was that statement.

Q. I hand you what has been marked State's Exhibit 6, 6A, 6B, 6C, 6D and 6E, is that the statement you referred to?

A. That is.

Q. And you were present during the taking of this statement?

A. I was.

Q. See anybody mistreat in any fashion the defendant?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection for the reason it would be a conclusion on the part of this witness.)

Q. Did you promise the defendant anything if he would make a statement?

(To which question and the answer sought to be elicited thereby, the defendants, by counsel, separately and severally interposed an objection, he can state what was said.)

By the Court: Objection overruled, you can cross-examine him.

A. No sir, we did not.

Q. During the time the statement was taken, did the defendant Pierce say anything about his injuries?

[fol. 469] A. No sir.

Q. Did he ask for anything?

A. He didn't.

Q. And that is your signature that appears on the last page of that exhibit?

A. That is right.

Q. Now, after that statement was taken, you have any other part in the investigation?

A. That was the end of my investigation on it.

Q. That was in Marion County, State of Indiana?

A. Yes.

By Mr. Dailey: That is all.

Cross-examination.

(The said witness testified further as follows on Cross-examination in response to question propounded by Waldo C. Ging, one of the attorneys for the defendants.)

Q. Now, Mr. Giles, you weren't on the homicide squad, as I understand it at that time?

A. No, I was detailed on the stolen automobile squad at that time.

Q. Were you present at all times when Paul Pierce was being interrogated?

A. I was.

[fol. 470] Q. Jesse McCarty was supposed to have written this, did you see him write it?

A. Yes sir.

Q. And that was all written, I mean, your investigat' started about when?

A. As soon as they brought them over from the State House.

Q. Did you go to the State Police Headquarters?

A. No sir.

Q. But when they returned, then you and Officer McCarty started your investigation and that was about what time in the morning?

A. I'd say around a quarter of ten.

Q. And when was the statement completed, the writing of it, when was it completed?

A. Sometime between that and 12 o'clock.

Q. Did you, I mean, did you actually participate in the interrogation?

A. I helped to do the questioning and Mr. McCarty wrote the statement.

Q. Did you supply any of the information and statements that were made in this statement?

A. I did in regard to the numbers of the automobile that was assigned to me.

Q. You didn't write any part of this statement?

A. No sir. I furnished those numbers for his report from the doctor's report.

Q. Now, during the taking of this statement, was any-
[fol. 471] thing said by Paul Pierce about his injuries or about medical attention?

A. No sir, he didn't complain in any way.

Q. Ask for water or anything of that kind?

A. No.

Q. And ask for an attorney?

A. No sir.

Q. Right to talk to his relatives or friends?

A. No sir.

Q. Just voluntarily made what Mr. McCarty wrote down here?

A. He just set down there and talked to us just the same as you and me are talking and give the statement.

Q. And signed it and then as soon as he signed the statement he was taken to the hospital for treatment, was he?

A. I don't know.

Q. Well, was Roy Pope in at any time during the signing of this statement?

A. No.

Q. Was John Gish, as officer there?

A. No sir.

Q. Didn't Fred Simon come in at one time?

A. No sir, Fred Simon wasn't in there.

Q. He was Chief of Detectives at that time?

A. He was.

Q. And there was, nobody, Pierce wasn't hit in the mouth by McCarty or Gish?

A. No sir, nobody touched him.

[fol. 472] Q. You sure Gish was in there?

A. Gish wasn't in there.

Q. He was a police officer at that time?

A. He was my partner.

Q. Detective?

A. Yes.

Q. He was your partner?

A. Yes.

Q. You weren't McCarty's partner then?

A. No sir.

Q. Who was McCarty's?

A. I was assigned on the automobile and he was on the murder case and we both got together and took the statement.

Q. Who was McCarty's partner?

A. Pope and Aulls, three of them in a squad.

Q. You just had one and that was Gish?

A. That is right.

Q. Was it before or after this statement was signed you got in the room where Joseph was making a statement too, didn't you?

A. I might have gone in there after this statement was signed, I don't remember, I might have gone in there and heard that statement because I have signed it, I know that.

Q. Was this statement read to Paul Pierce?

A. It was read to Paul Pierce and handed to him, handed across the table to him.

[fol. 473] Q. Who read it?

A. McCarty.

Q. Did Paul Pierce read it?

A. He looked at it and says give me a pen and he signed it.

Q. Each page of it, glance through it?

A. I don't think he signed but one place.

Q. I say, did he look through each, scrutinize each page?

A. I guess he did, he had it long enough to look at it and he said it was a true statement.

Q. It was written between what time, you say your investigation from quarter of ten or quarter after ten, which did you say?

A. I said must have been a quarter of ten to sometime before 12 o'clock.

Q. Approximately 2 hours then you investigated all this, I mean questioned Mr. Pierce, had all the information for it, entire period of time under investigation and then it was reduced to writing and Mr. Officer McCarty read it to him, these six or seven pages?

A. That is right.

Q. Then it was handed to Pierce, he read it or looked over it and that was done in a period of not to exceed two hours and then at the, at some time, either before or after, was it before or after this statement was executed, did you sign the Joseph statement as a witness?

A. I did sign that, yes sir.

Q. Afterwards or before?

[fols. 474-500] A. I signed it as a witness in the case. They might have read that statement to me after this statement was taken, that is possibly the way I signed it.

Q. State's Exhibit 4D, that is your signature, isn't it?
A. It is yes.
Q. Well now, when did you sign that statement?
A. After it was written.
Q. Were you present and did you see Donald Joseph sign that, put his signature on it?
A. No I didn't.
Q. You didn't have anything to do with that and didn't see Donald Joseph's signature there?
A. I read it and signed it.
Q. You weren't present when Donald Joseph signed it or when Pope signed it?
A. No.
Q. You just came in later on and put your name on it?
A. Yes.
Q. You don't know anything about the authenticity of that exhibit at all?
A. I'm not trying to testify on it either.

By Mr. Ging: That is all.

[fols. 501-508] Doctor Kenneth Kohlsteadt called to the witness stand as a witness in behalf of the State of Indiana and being first duly sworn to testify the truth, the whole truth and nothing but the truth relating to said above entitled cause, testified as follows on Examination in Chief, such examination in chief being conducted by Frank H. Fairchild, Prosecuting Attorney, 19th Judicial Circuit, State of Indiana.

[fol. 509] Q. Directing your attention specifically to the 10th day of December, 1935, were you present when the defendants Donald Joseph and Paul Pierce were brought to the Indianapolis City Hospital?
A. I was.
Q. Do you remember about what time of day it was?
A. It was in the morning of the day, I don't know the exact time.
Q. You believe it was in the morning?
A. That is right.
Q. And I mention December 10, 1935, is that correct as far as your knowledge of it is concerned?
A. Yes sir.

Q. Would you please tell what you saw or observed of the defendants, if you did examine them at that time?

A. Well, Paul Pierce was a bullet wound in his chest and we examined him to see if the bullet wound entered the chest cavity and there was no evidence that it had, the travel followed, richocheted, followed the path of the rib around and entered and left from the back. There was no sign of any change in the lung on that side. He was complaining about his arm as I remember it.

Q. The bullet entered the chest and followed a rib around?

A. Yes, it did not enter the lung or no evidence of collapsed lung from my examination.

Q. You mean that the bullet did not go clear through him?

A. If the bullet enters the lung, air will escape around [fol. 510] the area of the lung and collapse the lung and you will have evidence of a collapsed lung.

Q. Can you describe a little more in detail what happened in this case? There was a hole in the chest, is that right?

A. Through the skin of the chest.

(Thereupon, the defendants, by counsel, separately and severally interposed an objection to all this testimony for the reason it is not part of the case in chief. There has been no evidence introduced to permit or authorize rebuttal testimony at all relative to injuries sustained by these defendants and has nothing to do with their case in chief.)

By the Court: Objection overruled.

Q. The bullet, Doctor Myers, as I get it, went through the skin but hit a rib and followed that rib around.

A. I'm Doctor Kohlsteadt.

Q. Excuse me, Doctor Kohlsteadt, you have stated that the bullet broke the skin in Paul Pierce and then struck a rib, is that right?

A. It didn't enter the chest, it must have struck a rib. I didn't cut down on it and see it and the thing is, if it goes [fol. 511] between the ribs, it goes on through, if it hits the rib, it doesn't. That is the reason I know it hit the rib.

Q. How did it leave the body?

A. Travel around like any bullet, ricochet, travel around the ril nd go out. That is evidence that you have to see from ex mining a person.

Q. Any other injury that you noticed as far as Paul Pierce is concerned?

A. That was the chief one.

Q. What about Donald Joseph?

A. They had other injuries, they were not serious.

Q. Now, did they receive some medical attention there?

A. We dressed this particular bullet wound that we were most interested in over the possibility of the chest wound, dressed that and dressed any other minor lacerations, examined them to see their general condition as we were requested by the police officers, that was the usual thing in a days work.

Q. From your examination and treatment of both of these men, do you have an opinion as to whether or not they could be turned over to the Police Department at that time and return to jail?

A. It was my opinion that their physical condition did not warrant hospitalization.

Q. Were they thereafter turned back to the police officers?

A. Those were my orders, that they could be treated, what [fols. 512-513] we call out-patients, as you would in an office, without being put to bed in the hospital.

Q. These facts about which you testified took place in Marion County, Indiana in 1935?

A. They did.

[fol. 514] Cross-examination.

By Mr. Ging:

Q. Do you have an independent recollection of the exact date and time of day that these defendants were brought for your examination at the hospital?

A. Well, the hospital, as Assistant Superintendent, I was responsible for the hospital records, my recollection would be written down on the hospital records at that time.

Q. Were there any other doctors present, assisted you in the treatment of these men?

A. Well, there would be Residents, we always had residents, Interne Physicians there in the Admitting Room at the time. I think I'd have to, I couldn't remember which one of the doctors.

Q. You were, at that time, Assistant Superintendent of the hospital?

A. But it was my duty, the Admitting Room is the most vital part of the hospital, I spend a good portion of my time in the hospital. I wasn't interested in this particular case, having given the anesthetic, I happened to be there.

Q. I'm talking about Pierce and Joseph, at the time they were there.

A. It was customary for me to be in the admitting room. [fol. 515] Q. Were there any other doctors that assisted in any treatment that was given to them at that time?

A. Well, I'd have to look at the hospital record to remember the man's name.

Q. You haven't looked at the hospital records before you came out here to refresh your recollection about it?

A. Not about this point. I came to talk about something else.

Q. Did you see any evidence of fever, did you make any test to determine whether they had fever?

A. Certainly, examining any patient like that, you would.

Q. Well, did you in this case, did you give them to determine whether they had fever?

A. That would be the nurses duty in the receiving ward. It was our standard practice to take everyone's temperature.

Q. Do you now know whether they had fever?

A. No, not unless I saw the record. May I answer one more? I know they did not have very much fever because there was no clinical evidence of it from my examination of them at that time.

Q. You know whether they were suffering pain?

A. The word pain covers a wide range. I would say they were probably uncomfortable.

Q. You know whether there was any puss that had accumulated in these wounds?

A. Well, certainly, a wound of that type, you would [fol. 516] expect to have puss and infection.

Q. Do you now remember that the puss was removed at the time in the hospital, do you have any recollection?

A. We clean the wound, we always would remove the puss, sure. Any puss that was there, we removed it, sure.

Q. You haven't now, Doctor, any independent recollection as to when they were there or exactly what you or some other doctor or the nurse did with regard to any treatment given them, is that right?

A. Well, I remember, as I would a patient that I had treated, the minute details of the exact amount of fever they had at that time, I wouldn't be expected to remember that.

Q. Did you prescribe any medication?

A. No, I treated them locally.

Q. Didn't prescribe any medication at all, how long were they in the hospital during that treatment and examination?

A. I don't remember the exact time, it was a relatively short time. We treated them as out-patients.

Q. Do you now know whether you actually personally treated either of these defendants?

A. I was standing there when they were treated.

Q. Did you personally eliminate the puss and all that sort of thing, the treatment given?

A. As Assistant Superintendent, it was my job to be there and assist in the thing and others were helping me. I [fols. 517-689] wouldn't say I was the only one that treated them.

Q. You now don't have an independent recollection as to what part you played in that treatment?

A. I participated in the treatment.

Q. Can you tell me what other doctors or nurses were present and participated in that treatment?

A. I could tell you the doctor that should have been there.

Q. What doctor was there, if you know?

A. I'd have to refer to the record.

[fols. 690-691] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 692] [File endorsement omitted]

Waldo C. Ging, Stephen A. Free, Greenfield, Indiana, Attorneys for Appellants.

William S. Isham, Fowler, Indiana, Of Counsel.

Edwin K. Steers, Attorney General of Indiana, *Owen S. Boling,* Deputy Attorney General, *Robert S. Baker,* Deputy Attorney General, Attorneys for Appellee.

IN THE SUPREME COURT OF INDIANA

No. 29,231

DONALD JOSEPH, PAUL PIERCE, Appellants

v.

STATE OF INDIANA, Appellee

Appeal from the Hancock Circuit Court,
Honorable Samuel J. Offutt, Judge

OPINION—filed March 18, 1957

BOBBITT, J.

Appellants were indicted for murder in the first degree in the year 1935, tried by jury on change of venue to Hancock County in February, 1936, found guilty as charged and sentenced to the Indiana State Prison for life. On June 29, 1953, the Hancock Circuit Court sustained appellants' belated motion for a new trial. Thereafter, in November of [fol. 693] 1953, they were retried on the original indictment and the jury failed to agree. In January, 1954, appellants were tried for the third time, and on this trial the jury found them guilty of murder in the second degree. This appeal arises out of the third trial.

Errors are assigned as follows:

> "1. That the Court erred in denying defendants' separate and several motion for the personal presence and appearance in the Hancock County Circuit Court of defendants during the hearing and argument of the motion for new trial herein and in refusing to issue the

necessary order therefor timely requested by defendants, in contravention of Article I, Section 13, Indiana Constitution, and the Fourteenth Amendment of the United States Constitution.

"2. That the Court erred in overruling the motion for new trial."

First: We will first consider appellants' assertion that because they were prevented by the rules of the Indiana State Prison from filing a timely motion for a new trial and from prosecuting an appeal, at that time, from the original judgment, they were denied their constitutional right to due process and, therefore, must now be discharged.

We do not concur with appellants that unless they are permitted a review of the judgment which they sought to have reviewed in 1936, when their papers were allegedly suppressed by the prison authorities, that they must now be discharged.

On February 14, 1953, appellants, upon petition previously filed, were granted the right to file a belated motion for a new trial; and on March 12, 1953, a motion for a new trial was filed. Such motion was sustained and a new trial granted on June 29, 1953.

A timely review and reversal of the original judgment of commitment would have resulted in a new trial for appel-
[fol. 694] lants, hence, the same legal result was reached by the granting of their petition for a new trial on June 29, 1953.

If, on the hearing on the belated motion for a new trial, the court had overruled such motion instead of granting it, appellants' appeal would then have been from the original judgment. Carrying this reasoning to its next logical step, if, on such an appeal, this court would have reversed the judgment and granted a new trial, appellants would then have been in the identical situation in which they found themselves when the Hancock Circuit Court granted them a new trial on their belated motion therefor.

The mere fact that they were not retried for seventeen years from the date of the original judgment does not entitle them to a discharge. When the judgment upon which appellants were originally sentenced was set aside by the

granting of a new trial upon the belated motion therefor, they were subject to prosecution on the original indictment;

Slack v. *Grigsby* (1951), 229 Ind. 335, 344, 97 N.E. 2d 145;

in the same manner and for the same reasons that they could have been retried had they been granted a new trial upon timely motion therefor.

If appellants were denied an appeal by acts of the authorities of the Indiana State Prison until the statutory time for appeal had expired, that fact would not nullify the judgment lawfully rendered against them by the Hancock Circuit Court.

State ex rel. Cook v. *Howard, Warden* (1946), 223 Ind. 694, 699, 64 N.E. 2d 25.

The effect of the granting of the motion for permission to file a belated motion for a new trial was to extend the time for appeal. The sustaining of the belated motion for a [fol. 695] new trial acknowledged error in the original trial and furnished to appellants the same relief they might have secured by an appeal timely filed.

Since appellants have been accorded the same relief—a new trial—as they would have received by a timely appeal, they were, in effect, granted "the type of appeal generally afforded those convicted of crime" in Indiana.

See: *Dowd v. United States ex rel. Cook* (1951), 340 U.S. 206, 95 L. ed. 215, 219, 71 S.Ct. 262.

These appellants have been accorded a new trial of the issues and a timely appeal from the judgment of the trial court in that trial. The record here does not show that their substantial rights were prejudiced by any delay.

Pitts v. *State* (1939), 216 Ind. 168, 23 N.E. 2d. 673;
Blanton v. *State* (1954), 233 Ind. 51, 54, 115 N.E. 2d. 122;
Henderson v. *State* (1954), 233 Ind. 598, 602, 122 N.E. 2d 340.

It is worthy of note, however, that the record does not show that their reason for not filing a motion for a new trial was because they were in prison and "under legal disability,

and without funds, they were unable to secure a lawyer to advise them the steps or procedure necessary to file a belated motion for a new trial after the expiration of statutory time until the recent decision of the Supreme Court of the State of Indiana in the case of *Walker* vs. *State* (226 Ind. 552), 82 N.E. 2nd 245, which decision pointed the necessary steps available to present and file a belated motion for a new trial after the expiration of the statutory time in order to perfect the record, in order to appeal."

There is no time limitation on prosecution for murder in Indiana and if, under the factual situation shown by the [fol. 696] record here, appellants were to be discharged the result would be to impose a limitation within which an accused could be prosecuted for murder.

Society is entitled to some consideration in dealing with crime. The loss of evidence and the death of witnesses may effect the State as well as the defendant. Due process does not require that the prisoner may sit idly by and await the death of State witnesses or the loss of material evidence, then petition the trial court for a belated motion for a new trial and, if unsuccessful at such trial, secure his discharge by contending in this court that his constitutional rights were violated because of such delay, or because he was not granted a timely appeal from a judgment which was subsequently set aside by the granting of a belated motion for a new trial.

Due process does not, on the record in this case, require that appellants be discharged.

Second: Did the trial court err in denying defendants-appellants' motion to be personally present in the court room during the hearing and argument on their motion for a new trial?

Appellants rely upon *State ex rel. Cutsinger* v. *Spencer, Judge* (1941), 219 Ind. 148, 41 N.E. 2d 601, and *State ex rel. White* v. *Hilgemann, Judge* (1941), 218 Ind. 572, 34 N.E. 2d 129, for support of their assertion that the motion for a new trial is a part of, or a continuation of, the original trial.

State ex rel. White was an action by a poor person to obtain counsel, at the expense of the county, to perfect and present an appeal of a judgment rendered against him at the conclusion of his trial for murder in the first degree. This case lends no support to appellants' position here, but, [fol. 697] on the contrary, the language of this court in

State ex rel. White v. *Hilgemann, Judge, supra* (1941), 218 Ind. 572, 34 N.E. 2d 129, at page 577 of 218 Ind., as follows:

> "The Batchelor case (Batchelor v. State, 189 Ind. 69, 125 N.E. 773) deals with the right to counsel before and during the trial, but the reasoning supports the view that the defendant is entitled to have counsel to advise him and represent him on appeal.",

clearly recognizes that the "trial" and the "appeal" are separate proceedings.

State ex rel. Cutsinger v. *Spencer, Judge, supra,* (1941), 219 Ind. 148, 41 N.E. 2d 601, was also an action for mandate seeking to compel the trial court to furnish relator, at the expense of the county, a certified copy of the record in a criminal proceeding, for use in the preparation and filing of a petition for writ of error *coram nobis.*

The statement on pages 152 and 153 of 219 Ind., upon which appellants also rely, and which is as follows:

> "After he has been convicted, and the judgment has become final, and it has been determined upon appeal that there was no prejudicial error in the trial, or when the time is past and the right to a review for error has been waived, the defendant is no longer 'the accused,' and the 'criminal prosecution(s)' is ended.";

is dicta which must be considered in connection with the facts and circumstances in that case. There, the relator had been convicted, was serving his sentence in the Indiana State Prison, and the time for taking an appeal had expired, thereby waiving the right to review for error. Certainly, under such circumstances the defendant is no longer "the accused." However, this case cannot be considered as authority for the statement, that a defendant who takes the proper steps to appeal from a judgment of conviction remains the accused after the jury has found him guilty and the court has entered judgment upon the verdict. At this point the defendant stands convicted and ceases to be the "accused" within the meaning of Article I, Section 13 of the Constitution of the State of Indiana.

[fol. 698] Insofar as *State ex rel. Cutsinger* v. *Spencer, Judge, supra* (1941), 219 Ind. 148, 41 N.E. 2d 601, purports

to hold that a defendant continues to be the accused person referred to in Section 13 of Article I of the Constitution of the State of Indiana until his case has been affirmed on appeal, it is disapproved.

Ex Parte Huffman (1914), 181 Ind. 241, 104 N.E. 511, upon which appellants rely to support their alleged right to be present in person at the argument on their motion for a new trial—was an action to be admitted to bail during the pendency of petitioner's motion for a new trial. No question of the petitioner's right to be present at the presentation of his motion for a new trial was raised in this case, and the following language in the opinion, at page 244 of 181 Ind.,

> "This motion may be filed and presented by the defendant in person. Section 13, of our Bill of Rights (Constitution, Art. 1, § 13), guarantees the accused the right 'to be heard by himself', and this right continues until the disposition of a motion for a new trial, where such a proceeding is provided for.",

is pure dicta unsupported by authority or reason. Insofar as this dicta purports to hold that Article I, Section 13 of the Constitution of the State of Indiana guarantees an accused the right to be present in person at the time of the filing, or during the presentation of, or ruling upon, his motion for a new trial, it is disapproved.

The second clause of Article I, Section 13 of the Constitution of the State of Indiana, provides that in all criminal prosecutions the accused shall have the right "to be heard by himself and counsel."

Acts 1905, ch. 169, § 222, p. 584, being § 9-1801, Burns' 1956 Replacement, provides:

> [fol. 699] "No person prosecuted for any offense punishable by death, or by confinement in the state prison or county jail, shall be tried unless personally present during the trial."

This section merely declares the rule at common law. *Dean v. State of Indiana* (1955), 234 Ind. 568, 570, 130 N.E. 2d 126.

A motion for a new trial is not a part of the prosecution of a criminal case, rather, it is a proceeding by which the defendant seeks to vacate the previous trial and escape all of its results, *State* v. *Balsley* (1902), 159 Ind. 395, 397, 398, 65 N.E. 185; and to afford the trial court an opportunity to correct errors, if any, made in the trial.

Only a single trial was allowed at common law and a motion for a new trial was unknown.

> Ewbanks, Indiana Criminal Law, Symmes ed., § 490, p. 312;
>
> Pollock & Maitland, History of English Law, Vol. II, 2d ed., p. 664;
>
> Orfield, Criminal Procedure from Arrest to Appeal, pp. 494-498.

Under a statute which provides that, "if the indictment be for a felony, the defendant must be present, and shall remain in actual custody *during the trial;*" Cr. Code Pract. Sec. 183 (our italics), the Kentucky Court of Appeals has, in numerous cases, held that the words "during the trial" embrace all stages of the trial, which, as declared, " 'begins with the swearing of the jury and ends when the verdict is returned.' "

> *Puckett* v. *Commonwealth of Kentucky* (1923), 200 Ky. 509, 511, 512, 255 S.W. 125, 34 A.L.R. 96.

Kentucky also has a constitutional provision similar to Article I, Section 13 of the Constitution of the State of Indiana. The reasoning by which the Kentucky Court arrived at the above conclusion is sound, and we think applies [fol. 700] with equal force to our statute.[1]

We recognize that a defendant must be present at trial, verdict, and sentence.

> Wharton's Criminal Procedure, 10th ed. Vol. II, § 1485, p. 1948.

However, the right to be present at the time sentence or judgment is pronounced is a common law right, separate and

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[1] Acts 1905, ch. 169, § 222, p. 584, being § 9-1801, Burns' 1956 Replacement.

apart from the constitutional or statutory right to be present at the trial.

Ball v. *United States* (1891), 140, U.S. 118, 35 L. ed., 377, 11 S.Ct. 761;
15 Am. Jur., Criminal Law, §§ 454-456, pp. 113-114;
Wharton's Criminal Procedure, 10th ed., Vol. II, § 1486, p. 1949.

A trial consists of " 'The examination before a competent tribunal, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue.' "

Bush v. *State* (1920), 189 Ind. 467, 473, 128 N.E. 443.

Under this theory of a trial the accused has a right to be present when issues of fact are tried, but when matters of law are presented his presence is not required, unless the trial court deems it necessary.

Bishop's New Crim. Proc., 2d ed., Vol. I, § 269, p. 235;
Wharton's Criminal Procedure, 10th ed., Vol. II, § 1484, p. 1945.

The motion for a new trial herein is concerned with questions of law, hence, the defendants-appellants had no right to be present at the argument and hearing upon such motion, if they were represented by counsel and their substantial rights protected. The record shows that they were repre-
[fol. 701] sented by counsel and fails to disclose that any of their substantial rights were violated.

The ruling on a motion for a new trial in a criminal case is not part of the trial of the accused as contemplated by the statutory and constitutional provisions in this State.

Lillard v. *State* (1898), 151 Ind. 322, 326-327, 50 N.E. 383;
Reed v. *State* (1897), 147 Ind. 41, 46 N.E. 135;
Carman et al. v. *State* (1935), 208 Ind. 297, 309, 196 Ind. 78.

A motion for a new trial may be presented, argued and ruled upon in the absence of the accused, if he is represented by counsel and is awarded all the substantial rights which the law accords him.

Reed v. *State, supra* (1897), 147 Ind. 41, 46 N.E. 135;
Lillard v. *State, supra* (1898), 151 Ind. 322, 50 N.E. 383;
Selke v. *State* (1937), 211 Ind. 232, 236, 6. N.E. 2d 570;
State v. *Brown* (1876), 63 Mo. 439, 444;
Ward v. *Territory of Oklahoma* (1899), 8 Okl. 12, 56 Pac. 704, 707;
Wharton's Criminal Procedure, 10th ed., Vol. II, § 1484, p. 1946.

Cf. *Dillon* v. *State* (1952), 231 Ind. 396, 108 N.E. 2d 881, where it was held that appellant's constitutional rights were not violated by the refusal of the trial court to order his return for hearing on his petition for writ of error *coram nobis.*

Third: Appellants assert that the verdict of the jury is contrary to law for the reason that because of the lapse of more than seventeen years time between the time of the [fol. 702] returning of the indictment and the date of the present trial, certain evidence was missing and certain witnesses could not be found who would have been available in 1936 had appellants received a new trial at that time.

An examination of the transcript at the pages cited by appellants in their brief, discloses that the missing evidence of which they complain consisted of guns which were exhibits at the original trial, and that the witnesses who were unavailable were among those who had been subpoenaed as witnesses for the State. Appellants have failed to state at any place in their brief what evidence was missing, what witnesses were unavailable, and what the testimony would have been had the witnesses been present to testify.

We cannot see how appellants could have been harmed by the absence of State's witnesses, or by the failure of the State to produce certain guns which were in evidence at the first trial.

Appellants have failed to show where their substantial rights were in any way prejudiced by the absence of witnesses or the unavailability of evidence. No cause for reversal is here shown.

Henderson v. *State, supra* (1954), 233 Ind. 598, 602, 122 N.E. 2d 340.

Fourth: It is also asserted that there is no evidence to prove the *corpus delicti.*

Proof of the *corpus delicti* means proof that the specific crime charged has actually been committed by someone.

> *Taylor* v. *State* (1957), Ind. Sup. 140 N.E. 2d 104;
> *Hunt* v. *State* (1956), 235 Ind. 276, 133 N.E. 2d, 48, 49, 50.

[fol. 703] An examination of the evidence discloses that Detectives Chatham and Quinnette were assigned to make an investigation of an apartment in Indianapolis for stolen property and they were looking for a man by the name of Coleman for questioning concerning such property.

When Detective Chatham knocked at the door of the apartment it was opened from within and he stepped into the room followed immediately by Detective Quinnette. Upon entering the room the detectives saw the two men standing facing them who they later learned to be appellants herein, Donald Joseph and Paul Pierce.

Detective Chatham inquired which one of the two men was Mr. Coleman, whereupon both men replied, "I am." Chatham then said, "We are from the Detective Office and I'd like to talk to you a minute." At that time appellant Pierce said, "Stick them up, you son of a ——" and the shooting started, the first shot being fired by appellant Pierce. At that time he was approximately two feet in front of Detective Quinnette who then returned the fire. During the shooting Detective Quinnete fell to the floor. After emptying his gun at Detective Quinnette, appellant Pierce ran into the bedroom where he secured another gun.

Appellant Pierce was taken to the City Hospital into the room of Detective Quinnette who raised up off of his bed and pointed his finger at Pierce and said, "You shot me without giving me a chance."

An officer of the Indianapolis Police Department and a witness for the State testified that while he and appellant Pierce were returning from the City Hospital in Indianapolis, "I asked Paul Pierce if Quinnette and Chatham identified themselves as detectives, what made him shoot so [fol. 704] quick," He replied, "I would have shot any damn cop that would have walked in that doorway."

In a statement by appellant Pierce, dated December 10, 1935, and introduced as State's Exhibit No. 6, appears the following:

> "While myself and Orville Quinnette were shooting at each other I saw Orville Quinnette fall to the floor between the davenport and wall. And about this time I spun around. And fell to one knee. And Russell Chatham and Donald Joseph were on the davenport fighting. After I emptied by 38 caliber Smith and Wesson revolver #45969 at Orville Quinnette I ran back into a small bed room. And grabbed a brief case. Took a 38 caliber Colts revolver out of this brief case. Then throwed the brief case out into the living room. And I fired another shot. And I think this shot hit Russel Chatham. I fired this shot while I was in the living room. And while Russell Chatham and Donald Joseph were out in the hall fighting. And Donald Joseph must of got away from Russell Chatham. And came back into the apartment and I told Donald Joseph to grab the brief case which I had thrown on the floor in the living room. And we both ran out the back way of this apt. house."

The Superintendent of the Indianapolis City Hospital who was a physician, testified that he operated on Orville Quinnette and removed a bullet and piece of cloth from his abdominal cavity, and that Orville Quinnette died on December 18, 1935 as a result of peritonitis caused by a foreign body entering the abdomen of Quinnette such as the bullet and piece of cloth.

We believe this evidence sufficient to establish that someone shot Detective Quinnette and that he died as a result thereof.

Hunt v. *State* (1939), 216 Ind. 171, 178, 23 N.E. 2d 681.

Fifth: Appellants further assert that their rights under the law of Indiana and under the Fourteenth Amendment of the Constitution of the United States were violated because the State police who had apprehended them released them [fol. 704A] to the Indianapolis Police Department instead of delivering them to the County Sheriff at the Marion

County jail, and rely upon *Dearing* v. *State* (1951), 229 Ind. 131, 95 N.E. 2d 832, to support their position.

Dearing v. *State, supra,* was an appeal from a denial of a writ of error *coram nobis.* The only questions properly presented in that case were the validity of the bench warrant upon which appellant Dearing was arrested, and his right to counsel at all steps of the proceedings against him. Further, appellants in the case at bar were arrested on December 10, 1935, but were not indicted until December 18, 1935, hence, the sheriff had no warrant for their arrest at the time they were released to the Indianapolis Police Department on December 10, 1935. This was not the situation in the Dearing case, and assuming that it did make law which required the State Police to release prisoners only to County Sheriffs, a matter which we do not decide, that case lends no support to appellants' position under the circumstances here.

Both appellants were, at the time of their apprehension by the State Police, fugitives from justice. They had, on or about October 5, 1935, escaped from the Indiana State Prison. Under the circumstances as shown by the record, their substantial rights could not have been prejudiced by their release to the Indianapolis Police Department.

Appellants have failed to point out in the argument section of their brief wherein their rights under the Fourteenth Amendment were violated by their release to the Indianapolis Police Department, hence this question is waived.
[fol. 705] *Jordan* v. *State* (1953), 232 Ind. 265, 267, 110 N.E. 2d 751.

Sixth: Appellants further assert that the trial court erred in admitting, over their objection, certain exhibits offered by the State and consisting of statements or confessions made by appellants to officers of the Indianapolis Police Department while in their custody. Such statements were prima facie in evidence and the burden of showing their incompetency rested upon appellants.

> *Eiffe* v. *State* (1948), 226 Ind. 57, 77 N.E. 2nd 750;
> *Pearman* v. *State* (1954), 233 Ind. 111, 117 N.E. 2d 362, 364.

It is contended that such statements or confessions were made through fear, coercion and mistreatment. The record

shows that on each occasion when appellants objected to the admission of any statement or confession, the trial court excused the jury and conducted a hearing on their admissibility. It further shows that the evidence adduced at these hearings was in sharp conflict. Appellants admit, in their brief, that there was "considerable conflict" in this evidence. There was sufficient evidence of probative value to sustain the ruling of the court in each instance. Under such circumstances this court will not weigh the evidence.

Pearman v. *State supra* (1954), 233 Ind. 111, 117 N.E. 2d 362, 365.

While we do not deem it necessary to further extend this opinion by a recital of the testimony of the police officers and reputable physicians who treated appellants' gun wounds, we have examined the record and find substantial evidence sufficiently abundant to sustain the finding of the trial court in each instance.

[fol. 706] Appellants have failed to sustain their burden of proof and we must conclude that such statements and confessions were properly admitted in evidence. In our opinion there was sufficient evidence to sustain the verdict of the jury, and appellants have failed to show that it was contrary to law. Hence, the judgment of the trial court must be affirmed.

Judgment affirmed.

Achor, C.J., Arterburn, Emmert and Landis, JJ. concur.

[fol. 707] Clerk's Certificate to foregoing paper omitted in printing.

[fols. 708-709] [File endorsement omitted]

[fol. 710] IN THE SUPREME COURT OF INDIANA

[Title omitted]

APPEAL FROM
THE HANCOCK COUNTY CIRCUIT COURT

Cause No. 29231

APPELLANTS' PETITION FOR REHEARING—filed April 4, 1957

Comes now the appellants, Donald Joseph and Paul Pierce, in the above entitled cause and respectfully petitions and moves the Court for a rehearing herein for the following reasons, to-wit:

1. The Court erred in holding that appellants are not now entitled to discharge from custody; said holding being violative of the "equal protection" and "due process" clauses of the Fourteenth Amendment of the United States Constitution and contrary to ruling decisions of the United States Supreme Court.

2. The Court erred and contravened the Fourteenth Amendment of the United States Constitution and ruling decisions of the United States Supreme Court in holding that the sustaining of the belated motion for a new trial and the new trial furnished to appellants, seventeen years after the original trial and during which time the State of Indiana prevented appellants from perfecting a timely appeal, the same relief they might have obtained by a timely appeal from the original judgment of conviction.

3. The Court erred and contravened the Fourteenth Amendment of the United States Constitution and ruling decisions of the United States Supreme Court in holding that appellants were, in effect, granted the type of appeal generally afforded those convicted of crime in Indiana

[fol. 711] 4. The Court erred in holding that appellants were not entitled to be physically present in the court room when their motion for new trial was heard and argued.

5. The Court erred in holding that appellants' substantial rights were not prejudiced by the absence of witnesses and the unavailability of the guns and bullets allegedly used in the shooting.

6. The Court erred in holding that statements taken by Officers of the Indianapolis Police Department and signed by appellants and conversations allegedly had in connection therewith were admissable on the trial of this cause.

WHEREFORE, the appellants, Donald Joseph and Paul Pierce, respectfully urge the Court to rehear this cause and thereupon order and direct that they and each of them be discharged from custody forthwith.

Respectfully submitted, Donald Joseph, Appellant; Paul Pierce, Appellant; Waldo C. Ging, Stephen A. Free, Attorneys for Appellants; William S. Isham, of Counsel for Appellants. By: Stephen A. Free.

[fol. 712] To:

The Attorney General
State of Indiana

NOTICE OF FILING PETITION FOR REHEARING

You are hereby notified that the appellants in the above entitled cause are this day filing their petition with the Supreme Court of the State of Indiana, asking for a rehearing in his matter and that they are filing a brief in support of said petition.

Waldo C. Ging, Stephen A. Free, William S. Isham, Attorneys for Appellants. By: Stephen A. Free.

Acknowledgment of service
(omitted in printing)

[fol. 713] April 30, 1957

Petition for Rehearing Denied.

Harold E. Achor

[fol. 714] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 715] SUPREME COURT OF THE UNITED STATES

No. 10 Misc.

October Term, 1957

DONALD JOSEPH and PAUL PIERCE, Petitioners,

vs.

STATE OF INDIANA

On petition for writ of Certiorari to the Supreme Court of the State of Indiana

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI —October 14, 1957

On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in *forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted limited to the question of the admissibility of the confession. The case is transferred to the appellate docket as No. 548 and placed on the summary calendar.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 8

DONALD JOSEPH AND PAUL PIERCE,
Petitioners,

vs.

STATE OF INDIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF INDIANA

BRIEF FOR PETITIONERS

WILLIAM S. ISHAM
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 8

DONALD JOSEPH AND PAUL PIERCE,

Petitioners,

vs.

STATE OF INDIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF INDIANA

BRIEF FOR PETITIONERS

Opinion Below

The opinion of the Supreme Court of Indiana in this case is set out in the record at pages 198 to 210 thereof and is officially reported in —— Ind. ——, 141 N. E. 2d 109. Petition for rehearing was denied on the 30th day of April, 1957, without opinion (R. 213).

Jurisdiction

Judgment of the Circuit Court of Hancock County, Indiana, was entered on the 16th day of February, 1954 (R. 6-8); affirmed by the Supreme Court of Indiana on the 18th day of March, 1957 (R. 198-210) and petition for rehearing was denied on the 30th day of April, 1957 (R. 213). Petition for certiorari to review the judgment of the Supreme Court of the State of Indiana affirming the conviction was filed on the 10th day of May, 1957, based upon 28 United States Code, Section 1257, and was granted by this Court on the 14th day of October, 1957 (R. 213).

Statement of the Case

During the course of the trial of this case in the Hancock County Circuit Court petitioners objected to the presentation of testimony in evidence of certain alleged conversations allegedly had between these petitioners and their custodial police officers (R. 46, 49 and 154-155) for the reason that at the time in question petitioners were wounded, had lost considerable blood and were in pain and had not been taken before a magistrate and informed of their constitutional rights nor had they been permitted to consult with an attorney to advise them of their rights nor had there been any showing made that these conversations were voluntary. The Court, after hearing evidence outside the presence of the jury (R. 46-50) as to Paul Pierce and in the presence of the jury as to Donald Joseph (R. 154), overruled the objection of Paul Pierce (R. 50) and overruled the objection of Donald Joseph (R. 155). Thereupon these conversations were admitted in evidence to the trial jury (R. 51-54 and R. 155-156).

Petitioners further objected to the admission into evidence on the trial of this case certain alleged confessions

obtained from them by state officers through the use of force, duress, intimidation and the threats to withhold and the actual withholding of medical treatment of petitioners unless and until they signed said confessions as written by said police officers (R. 54-55 and R. 157-158) in violation of Section 10-404, Burns' Repl., *Suter* v. *State,* 1949, 227 Ind. 648, 88 N. E. 2d 386, p. 391. The trial court overruled these objections (R. 97 and R. 170) and permitted these confessions to be read in evidence to the trial jury and denied petitioners' motion for a new trial in which these errors were specifically preserved (R. 8-13). Upon appeal to the Supreme Court of Indiana, these substantial constitutional questions were raised (R. 1) and decided adversely to petitioners by said court through affirmance of the convictions (R. 198-210) and denial of the petition for rehearing (R. 213).

Errors Relied Upon

A

The Court Erred in Affirming the Conviction of Petitioners Based Upon Oral Statements Elicited From Petitioners by State Officers Through the Use of Force, Duress, Intimidation and the Threat of and the Actual Withholding of Needed Medical Treatment of Petitioners in Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and of Section 10-404, Burns' 1942, Repl.

B

The Court Erred in Affirming the Conviction of Petitioners Based Upon Written Confessions Obtained by State Officers Through the Use of Force,

Duress, Intimidation and the Threat of and the Actual Withholding of Needed Medical Treatment of Petitioners in Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and of Section 10-404, Burns' 1942, Repl.

Summary of Argument

Since substantially the same question is raised by both of petitioners' assigned errors herein they are grouped and supported by one argument in the interests of brevity.

I

Where Substantial Federal Questions Have Been Raised and Passed Upon in a State Court, This Court Will Make an Independent Examination of the Evidence.

Watts v. *Indiana,* 338 U. S. 49, 69 S. Ct. 1347;
Haley v. *Ohio,* 332 U. S. 596, 68 S. Ct. 302;
Patton v. *Mississippi,* 332 U. S. 463;
Malinski v. *New York,* 324 U. S. 401, 65 S. Ct. 781.

II

The Lower Court Erred in Affirming the Conviction of These Petitioners Based Upon Written Confessions Obtained and Oral Statements Elicited From Petitioners by State Officers Through the Use of Force, Duress, Fear, Coercion, Lack of Sleep, Intimidation and the Denial of Necessary Medical Attention.

(a) The circumstances surrounding the obtaining of the alleged confessions and the oral statements herein clearly establish their involuntary nature.

(b) Use of such confession and statements and affirmance of the conviction based thereon violates the Fourteenth Amendment.

Watts v. *State of Indiana,* 338 U. S. 49, 69 S. Ct. 1347;
Haley v. *Ohio,* 332 U. S. 596, 68 S. Ct. 302;
Malinski v. *New York,* 324 U. S. 401, 65 S. Ct. 781;
Ashcraft v. *Tennessee,* 322 U. S. 143, 64 S. Ct. 921;
Chambers v. *Florida,* 309 U. S. 227;
Brown v. *Mississippi,* 297 U. S. 278, 56 S. Ct. 461.

ARGUMENT

I

This Court Will Independently Examine Evidence in Support of Claim of Violation of Rights Protected by United States Constitution Where Such Claim Is Properly Raised and Denied by the State Court.

Throughout the proceedings in the courts of Indiana, petitioners claimed that rights protected by the United States Constitution had been denied them through the use of oral statements elicited and written confessions obtained through the use of force, duress, intimidation and the denial of necessary medical attention by state custodial officers (R. 46, 49, 50, 54, 55, 107, 108, 135, 154, 155 and 157). At each stage these rights were asserted by these petitioners and denied by the Indiana State Courts. This Court will examine and appraise the evidence as it relates to petitioners' Constitutional rights, *Smith* v. *Texas,* 311 U. S. 128, at 130, so as to determine the validity of the claim, *Lisenba* v. *California,* 314 U. S. 219, at 237, and whether such rights were denied either in express terms

or in "substance and effect." *Norris* v. *Alabama*, 294 U. S. 587, at 589; *Haley* v. *Ohio, supra.*

In the case of *Chambers* v. *Florida, supra,* where a conviction based upon confessions induced by fear and duress was reversed, this Court reemphasized the challenging role of our judiciary in such cases, stating:

> "Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. * * * No higher duty, no more solemn responsibility rests upon this Court than that of translating into living law and maintaining these constitutional shields deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion" (at p. 241).

In the instant case, the uncontradicted testimony shows that petitioners were wounded by gunshot in the altercation between two "plainclothes" Detective Officers of the Indianapolis Police Department and petitioners in an apartment rented to petitioners; that petitioners fled from the scene of the shooting and were apprehended shortly thereafter by members of the Indiana State Police; that petitioners were taken to State Police Headquarters in Indianapolis and subsequently turned over to members of the Indianapolis City Police Department; that petitioners' wounds were not treated while they were in custody of Officers of the Indianapolis City Police Department and before said conversations and statements were made; that a bullet went in the front of Pierce's body and emerged from his back; that bullet grazed the stomach of Joseph's body and another entered his body under his left arm

and emerged from his back; that petitioners had lost considerable blood; that Pierce had suffered unconsciousness after his injury and before the questioning and signing of the statements; that Pierce was suffering chills; that after they were taken into custody by State Police Officers they were never thereafter out of custody of Police Officers until after these conversations were had and these statements were made and signed; that during said time they had not consulted with an attorney, relatives or friends; that they had been placed in a cell with no furnishings during the night; that they had not been taken before any judicial officer for arraignment and hearing and advised of their constitutional rights (R. 47, 70, 88, 154, 160, 161 and 183) as required by the laws of Indiana (Burns' Indiana Statutes, 1942 Repl., Sec. 9-704); that immediately after these statements were signed by petitioners they were taken to the hospital where their wounds were probed, pus was removed and they were given tetanus shots (R. 97, 169 and 184).

The facts and circumstances which are uncontradicted establish that the oral statements and the written confessions were not the result of the free choice of petitioners but rather flowed from the long gruelling questioning, physical exhaustion and desire to obtain medical treatment of their wounds brought about by State Officers while held incommunicado and without due process and equal protection.

Conclusion

The record clearly shows petitioners' conviction was based upon statements and confessions extorted from them through the use of force, duress and intimidation. The refusal of the Supreme Court of Indiana to reverse the conviction upon the basis of their federal claim properly presented to it constitutes a violation of rights guaranteed petitioners by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of the State of Indiana and of the Hancock Circuit Court should be reversed.

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No. 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

DONALD JOSEPH AND PAUL PIERCE,

Petitioners,

v.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF

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No 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

DONALD JOSEPH AND PAUL PIERCE,

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v.

STATE OF INDIANA,

Respondent.

RESPONDENT'S BRIEF

JURISDICTION

Because of language contained in petitioners' statement of the case and their argument, respondent would respectfully call attention to the Court's order granting certiorari in the cause which is as follows:

> "On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in *forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is here-

> by, granted limited to the question of the admissibility of the confession. The case is transferred to the appellate docket as No. 548 and placed on the summary calendar." (R., 213.)

The Court has, therefore, limited this cause to consideration of the admissibility of the confessions.

STATEMENT OF THE CASE

In the first paragraph of their statement of the case in their brief, petitioners refer to the admission of alleged conversations held between them and certain police officers. As respondent understands the order of the Court quoted above, these conversations are outside the limited question before this court.

If these conversations are considered by the Court under its order granting certiorari, then the shading given their admission by the petitioners' insertion of wording not present in the original objections should be noted. On page 2 of their brief, petitioners say that they objected to the presentation of testimony in evidence of certain alleged conversations between petitioners and police officers "* * * for the reason that at the time in question petitioners were wounded, had lost considerable blood and were in pain * * *." This statement is not supported by the record. Petitioners first objection appears on page 46 of the printed record and contains no reference whatever to the physical condition of petitioners. In renewing their objection (R-49) this statement is made "* * * object for the further reason that he had been seriously wounded and had, so far as this witness is concerned, no knowledge of any medical attention he had received * * *." The

objections referred to in petitioners' statement of the record as appearing on pages 154-155 of the record contain no reference to the physical condition of petitioners and are, of course, made to testimony from a different witness than the one whose testimony appears on page 49 of the record.

In paragraph two of their statement of the case appearing on pages 2 and 3 of their brief, petitioners state that they objected to the admission of confessions obtained through the use of force, duress, intimidation and the threats to withhold and the actual withholding of medical treatment and refer to certain pages of the printed record. This statement is inaccurate in that it fails to point out that hearings were held outside the presence of the jury on the admissibility of these confessions and that the evidence was in sharp conflict. (R., 56-98, R., 156-170.)

SUMMARY OF ARGUMENT

Petitioners, Donald Joseph and Paul Pierce, signed written confessions which were admitted over their separate objections at their trial in the Circuit Court of Hancock County, Indiana. Petitioners' version of the events preceding their confessions, if true, would have constituted a denial of their constitutional rights. As to each confession, however, the trial Court held hearings outside the presence of the jury on the issue of admissibility as affected by petitioners' claims of coercion, intimidation and duress. The evidence presented by petitioners was in both cases contradicted in every detail by evidence introduced by the State. At the conclusion of the hearing on Pierce's confession, the Court admitted it as to Pierce, but excluded

it as to Joseph. At the conclusion of the hearing on Joseph's confession, the Court admitted it as to Joseph, but excluded it as to Pierce.

On review of State convictions in which it is claimed that the admission of coerced confessions vitiated convictions for murder, this Court has stated that any conflict in testimony as to what actually led to a contested confession is not the concern of the Supreme Court of the United States.

Watts v. Indiana (1949), 338 U. S. 49, 51, 69 S. Ct. 1347, 1348.*

As stated in the Watts case, *supra,* only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issues in this Court. There are no such issues in the record in this cause.

In Indiana, failure to take an accused before a magistrate does not deprive a trial Court of jurisdiction, and does not make confessions obtained prior to appearance before a magistrate inadmissible.

Willennar v. State (1949), 228 Ind. 248, 252, 91 N. E. (2d) 178;

Marshall v. State (1948), 227 Ind. 1, 10, 83 N. E. (2d) 763;

Hicks v. State (1938), 213 Ind. 277, 11 N. E. (2d) 171.

*Thomas v. State of Arizona (1958), _____U.S._____, 78 S. Ct. 885, 892.

ARGUMENT

I

IN ANSWER TO PETITIONERS' ARGUMENT STARTING IN THEIR BRIEF AT PAGE 5

Petitioners argue on page 5 of their brief as follows:

> "Throughout the proceedings in the Courts of Indiana, petitioners claimed that rights protected by the United States Constitution had been denied them through the use of oral statements elicited and written confessions obtained through the use of force, duress, intimidation and the denial of necessary medical attention by state custodial officers."

In support of such statement petitioners refer to the following pages of the printed record: R., pp. 46, 49, 50, 54, 55, 107, 108, 135, 154, 155 and 157. These cited pages of the record support petitioners' above-quoted statement only in part. An examination of the objections appearing on pages 46, 50, 135, 154, and 155 of the printed record shows that they contain no reference to the physical condition of petitioners.

The objection which appears on page 135 of the printed record is to the testimony of Matt Leach, who was at the time of the commission of the crime, Captain in charge of the Indiana State Police. (R., 133.) Leach testified that as soon as petitioners were brought to State Police Headquarters, they were brought to him. Leach testified that both petitioners had bandaged arms and that, therefore, he called Doctor Bird (elsewhere in the record referred to as Doctor Beard), the State Police physician, that Doctor Bird spent an hour with petitioners treating their wounds,

and that Doctor Bird was paid by petitioners from money they had in their possession when they were captured. (R., 133-142.)

After the above-quoted section of their brief, petitioners state that the United States Supreme Court will examine and appraise evidence as it relates to petitioners' constitutional rights and cite cases to support this contention. Respondent agrees that this is the law.

II

IN ANSWER TO PETITIONERS' ARGUMENT STARTING AT PAGE 6 OF THEIR BRIEF

Beginning in the middle of page 6 of their brief, petitioners make the statement that "uncontradicted testimony" shows certain facts and then summarize the case beginning with the commission of the crime and ending with their admission to a hospital after their confessions.

They then state:

> "The facts and circumstances which are uncontradicted establish that the oral statements and the written confessions were not the result of the free choice of petitioners but rather flowed from the long gruelling questioning, physical exhaustion and desire to obtain medical treatment of their wounds brought about by State Officers while held incommunicado and without due process and equal protection."

The above statement is not correct. Petitioners allegations as to the evidence, which if true, would have shown a denial of constitutional rights, were sharply contradicted

by testimony given at the trial of this cause in hearings held outside the presence of the jury.

The Confession of Paul Pierce

The hearing on the confession of Paul Pierce begins on page 56 of the printed record and ends on page 97. It includes the testimony of Paul Pierce, Jesse McCarty, John Giles and Roy Pope. Paul Pierce testified that he was wounded in a gun battle with police officers Chatham and Quinnette shortly after noon on December 7, 1935, that he was arrested at 1:30 in the morning of December 10, that he had had no medical attention from the time he was wounded until his arrest, that he arrived at State Police Headquarters in the State House in Indianapolis about 2:30 in the morning of December 10, 1935, and was held there until 8 or 9 o'clock the next morning, that he received no medical attention while at State Police Headquarters and that about 9 o'clock he was taken to Indianapolis City Police Headquarters by four Indianapolis police officers including detectives Pope, McCarty, Gish and Auls. Pierce further testified that as they came down the steps of the State House, detective Pope said something like, "Why don't you run now, you son of a bitch?", that he was taken into a small interrogation room at City Police Headquarters where police officers were present and that he and Donald Joseph were not taken to the same interrogation room, that he was weak, had had nothing to eat, had lost a lot of blood, had chills and was thirsty, that he had had no sleep to amount to anything for the previous three nights, that he was in pain, that his left arm was almost completely paralyzed, that he had not been taken before a magistrate, that he did not advise with any attor-

ney or talk to any relatives or friends, that he was denied drinking water, that the questioning of him began at 8 or 8:30 in the morning and continued all day until around 4 or 5 o'clock in the evening, that he was questioned later on in the night by two or three groups of officers, that he received no medical attention during the day, that he did not sign a written statement that day, that he was placed over night in a jail cell 6 ft. wide by 8, 9 or 10 ft. long with no furniture of any kind in the cell, with no bed, without any outside ventilation, that it was cold in the cell, that it was too cold to sleep on the floor, that he was given no bed clothing, that he was not permitted to communicate with anyone during the night. Pierce further testified that he asked to contact an Indianapolis Attorney named Ernest Owens shortly after he arrived at the police station and officer Pope threw Owen's card on the floor and told Pierce that he did not need an attorney; that after a sleepless night in a bare jail cell and without receiving any food or medical attention and after requesting officer Pope several times to get him medical attention, he was again questioned on December 11 by officers Pope, McCarty, and John Giles; that officer Gish hit him, bloodied the left side of his mouth and knocked him down on the floor, that Gish then kicked him in the stomach about a half dozen times and while this was going on the Chief of Detectives entered the room and made the officer stop; that after receiving no medical care at any time on the 11th of December and late on the evening of the 11th he signed the statement which the State now sought to introduce and that after signing the statement he was taken to City Hospital for medical treatment. On cross-examination he testified that he did not know that officer Gish was the only one of the officers now dead. (R., 56-78.)

Officer McCarty testified at the hearing held outside the presence of the jury that he did not strike Pierce, call him a "son of a bitch" or see anyone else strike him; that he was one of the Officers who went to the State House to get Pierce and Joseph around 9 o'clock on the morning of December 10; that they were informed by State Police Officers that both Pierce and Joseph had received medical attention from Doctor Beard, the State Police physician, and that they were physically able to be taken to jail; that Pierce signed the statement the State offered to introduce as evidence as State's Exhibit 6 on the same morning, that is, the morning of December 10 and that Pierce was taken to City Hospital sometime around noon of December 10; that he showed no signs of physical pain and that after receiving medical attention, he was returned to Police Headquarters where an additional statement was made, concerning activities with Joseph after his escape from Michigan City State Prison. (R., 78-90.)

Officer Giles testified that he was present during the questioning of Paul Pierce on December 10; that he saw no physical duress used on the defendant; that Pierce did not complain of his injuries; that Officer Gish was not present at anytime during the taking of Pierce's statement. (R., 90-93.)

Officer Pope testified that he was one of the Officers who went to Indiana State Police Headquarters to get Pierce and Joseph, that he did not call Pierce a "son of a bitch"; that he questioned Joseph while officers were questioning Pierce and that both Pierce and Joseph went to the Hospital on that same day, the 10th; that Pierce made no complaints about his injuries; that he was not questioned at any time on the 11th and that Pierce talked freely concerning the shooting of Quinnette. (R., 93-97.)

After these conflicting stories concerning the incidents which led to the signing of the statement by Paul Pierce, the Court overruled the objections to the introduction of State's Exhibit 6 as to Paul Pierce and sustained them as to Donald Joseph. (R., 97.)

The Confession of Donald Joseph

When the State sought to introduce the confession of Donald Joseph, State's Exhibit 4, the defendants objected and a hearing was held outside the presence of the jury to determine the admissibility of this confession. (R., 156-170.) At the hearing outside the presence of the jury, evidence was heard from the defendant Donald Joseph and Police Officer Roy Pope.

Joseph's testimony was, in part, as follows: He was arrested and taken to Indiana State Police Headquarters and from there to Indianapolis City Police Headquarters by officers Pope, Auls, Giles and another detective; that he was wounded and had lost some blood and had no medical treatment for nearly 72 hours; that he received no medical attention while at State Police Headquarters; that he was not taken before a magistrate or advised of his constitutional rights, that he had no advice from an attorney; that Officer Pope made the statement on the steps of the State House, "Why don't you run now you son of a bitch"; that after arriving at State Police Headquarters, he asked Officer Pope many times to get him a lawyer and that Pope did not do so; that his questioning began around 9:30 in the morning of December 10 and continued until 5 o'clock that evening; that he did sign the statement; that he was told as soon as he signed the statement he would get medical attention; that he was told this by Officer Pope;

that he was held for a period of 30 hours before he received medical attention and that he signed the statement on the 11th of December after spending the night in a bare jail cell with little sleep; that he received no hospitalization; that he was kicked by Officer Pope as he was coming through the door back into the interrogation room; that he signed the statement around 3 o'clock on the afternoon of December 11th. (R., 158-167.)

Officer Pope testified that, during the time he took the statement from Donald Joseph, he did not in any way physically harm Joseph or touch him or see anyone else do so; that Joseph did not demand a lawyer; that he accompanied Joseph to the hospital and that Joseph had received medical attention from Doctor Beard prior to being turned over to the Indianapolis Police. (R., 168-170.)

At the conclusion of Pope's testimony the jury was recalled, the objection to the introduction of State's Exhibit 4 as to Donald Joseph was overruled and was sustained as to Paul Pierce.

CONCLUSION

It is obvious that there is no uncontradicted testimony of the type described by petitioners in their brief. The evidence is in complete conflict and on this question the trial Court found against petitioners. Respondent submits that the finding of the trial Court was not unreasonable and is conclusive in regard to the disputed questions of fact surrounding the confessions of petitioners.

The petitioners herein, Donald Joseph and Paul Pierce, each made and signed written confessions, which were admitted in evidence over the objections of the petitioners. This action and ruling of the trial Court was reviewed by the Supreme Court of the State of Indiana, — Ind. —, 141 N. E. (2d) 109, and with the entire record before it such Court held that there was no error in the admission of such confessions as a part of the evidence in this cause. As stated by the Supreme Court of Indiana, there is sharp conflict in the testimony of the defendants (petitioners herein) and the testimony of the officers.

A statute of the State of Indiana enacted in 1905 (Acts 1905, Ch. 169, Sec. 239, p. 584), as found in Burns' Indiana Statutes (1956 Replacement), Section 9-1607, provides:

> "The confession of a defendant made under inducement, with all the circumstances, may be given in evidence against him, except when made under the influence of fear produced by threats or by intimidation or undue influences; but a confession made under inducement is not sufficient to warrant a conviction without corroborating evidence."

Eiffe v. State (1948), 226 Ind. 57, 61, 77 N. E. (2d) 750;

Mack v. State (1931), 203 Ind. 355, 180 N. E. 279;

Ogle v. State (1922), 193 Ind. 187, 127 N. E. 547.

The admissibility of a confession is a question to be determined by the Court and it may hear the evidence with respect thereto in the absence of the jury, and from such evidence determine the competency of the offered confession.

The burden of showing its incompetency is upon the defendant as such statute is construed by the Supreme Court of this State.

Caudill v. State (1946), 224 Ind. 531, 69 N. E. (2d) 549;
Schuble v. State (1948), 226 Ind. 299, 79 N. E. (2d) 647.

In Indiana, failure to take a prisoner before an examining magistrate as provided by statute (Acts 1939, Ch. 48, Sec. 163, p. 289), as found in Burns' Indiana Statutes [1952 Replacement], Section 47-2307, does not as a matter of law require that evidence consisting of a confession be rejected in the absence of any showing that the confession was obtained by coercion.

Willennar v. State (1949), 228 Ind. 248, 252, 91 N. E. (2d) 178;
Marshall v. State (1948), 227 Ind. 1, 10, 83 N. E. (2d) 763;
Hicks v. State (1938), 213 Ind. 277, 11 N. E. (2d) 171;

See also:

Sisk v. State (1953), 232 Ind. 214, 221, 110 N. E. (2d) 627.

A decision of a state Court resting on grounds of State procedure does not present a Federal question.

McNulty v. Calif. **(1893), 149 U. S. 645, 13 S. Ct. 959, 37 L. Ed. 882.**

Petitioners' confessions were introduced over their objections only after hearings outside the presence of the jury in which the evidence was in sharp conflict. The trial Court resolved the contradictions in the evidence in regard to coercion and intimidation against the petitioners and for the State. Failure to take the petitioners before an examining magistrate did not under Indiana Law deprive the State of jurisdiction over the petitioners and did not violate their Federal Constitutional rights. Respondent asks that the opinion of the Supreme Court of Indiana be affirmed.

Respectfully submitted,

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